AGENDA

ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING THURSDAY, MARCH 3, 2022 - 4:30 PM MCALLEN DEVELOPMENT CENTER, 311 N. 15TH STREET EXECUTIVE CONFERENCE ROOM

At any time during the course of this meeting, the Zoning Board of Adjustment and Appeals may retire to Executive Session under Texas Government Code 551.071(2) to confer with its legal counsel on any subject matter on this agenda in which the duty of the attorney to the Zoning Board of Adjustment and Appeals under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. Further, at any time during the course of this meeting, the Zoning Board of Adjustment and Appeals may retire to Executive Session to deliberate on any subject slated for discussion at this meeting, as may be permitted under one or more of the exceptions to the Open Meetings Act set forth in Title 5, Subtitle A, Chapter 551, Subchapter D of the Texas Government Code.

CALL TO ORDER – CHAIRPERSON SYLVIA HINOJOSA

1. MINUTES:

a) Minutes for the meeting held on February 2, 2022 and February 17, 2022

2. PUBLIC HEARINGS:

- a) Request of Teresa C. Gutierrez and Jose M. Gutierrez, Jr. for the following special exception to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 20 ft. into the 20 ft. front yard setback for an existing metal carport measuring 11.41 ft. by 22.25 ft. 2) to not provide one required parking space beyond the front setback at Lot 43, La Lomita Estates Subdivision, Hidalgo County, Texas; 3008 La Vista Avenue. (ZBA2022-0002)
- b) Request of James Joseph Granchelli on behalf of Granchelli Development Group, LTD for the following Special Exception to the City of McAllen Zoning Ordinance: to allow an encroachment of 58.42 feet into the 136 feet front yard setback for a carport measuring 18.5 feet by 74 feet, at Lots 11-14, McAllen Industrial Dr. Subdivision, Hidalgo County, Texas; 2017, 2013, 2009, and 2005 Industrial Drive. (ZBA2022-0004) WITHDRAWN
- c) Request of Daryl J. Minor for the following Special Exception to the City of McAllen Zoning Ordinance: 1) to allow an encroachment of 35 ft. into the 35 ft. front yard setback along the west property line and 2) to allow an encroachment of 7 ft. into the 7 ft. side yard setback along the south property line for an existing metal carport measuring 11 ft. by 35 ft., at Lot 16, Block 6, Milmor Addition to McAllen Subdivision, Hidalgo County, Texas; 1106 North 17th Street. (ZBA2022-0005)
- d) Request of Robert Fountila, MD on behalf of Fountila Investments, LLC for the following Variances to the City of McAllen Zoning Ordinance: 1) to allow an encroachment of 7 feet into the 25 feet front yard setback for an existing metal gazebo (porch) measuring 10 feet by 10 feet and 2) to allow an encroachment of 10.5 feet into the 25 feet front yard setback for an existing metal gazebo (porch) measuring 10 feet for an existing metal gazebo (porch) measuring 10 feet by 10 feet and 2) to allow an encroachment of 10.5 feet into the 25 feet front yard setback for an existing metal gazebo (porch) measuring 10 feet by 16 feet, at Lot 101, Fairway Grande Village Unit No. 2 Subdivision, Hidalgo County, Texas; 416 East Ridgeland Avenue. (ZBA2022-0003)

3. FUTURE AGENDA ITEMS

a) 1512 Tulip Avenue

ADJOURNMENT:

IF ANY ACCOMMODATIONS FOR A DISABILITY ARE REQUIRED, PLEASE NOTIFY THE PLANNING DEPARTMENT (681-1250) 72 HOURS BEFORE THE MEETING DATE. WITH REGARD TO ANY ITEM, THE ZONING BOARD OF ADJUSTMENTS AND APPEALS MAY TAKE VARIOUS ACTIONS, INCLUDING BUT NOT LIMITED TO RESCHEDULING AN ITEM IN ITS ENTIRETY FOR PARTICULAR ACTION AT A FUTURE DATE.

STATE OF TEXAS COUNTY OF HIDALGO CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, February 2, 2022 at 4:30 p.m. in the McAllen Development Center, Executive Conference Room with the following present:

Present":	Sylvia Hinojosa Jose Gutierrez Ann Tafel Hugo Avila Rebecca Millan Rogelio Rodriguez Mark Talbot	Member Member Alternate Alternate Alternate Alternate
Staff Present:	Austin Stevenson Michelle Rivera Edgar Garcia Rodrigo Sanchez Kaveh Forghanparast Jose Luis Flores Porfirio Hernandez Julian Hernandez Carmen White Natalie Martinez	Assistant City Attorney Assistant City Manager Planning Director Senior Planner Planner II Planner I Planning Technician II Planning Technician I Administrative Assistant Administrative Assistant

CALL TO ORDER – Acting Chairperson Sylvia Hinojosa

1. MINUTES:

- a) Minutes for the meeting held on January 5, 2022.
- **b)** Minutes for the meeting held on January 19, 2022.

The minutes for the meeting held on January 5, 2022 and January 19, 2022 were approved. The motion to approve the minutes was made by Mr. Hugo Avila. Ms. Jose Gutierrez seconded the motion, which carried unanimously with five members present and voting.

2. PUBLIC HEARINGS:

a) Request of Diana Torres for the following special exception and variances to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 11 ft. into the 25 ft. front yard setback for an existing metal carport measuring approximately 111 ft. by 13 ft., 2) an encroachment of 6 ft. into the 6 ft. side yard setback along

the north property line for an existing metal carport measuring approximately 111 ft. by 13 ft.,**3**) an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal garage measuring approximately 15 ft. by 13 ft., and **4**) an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing metal garage measuring approximately 15 ft. by 13 ft., at the North 60 feet of Lot 15, of the Southeast ¼ of Section 9, Hidalgo Canal Company-McAllen Subdivision, Hidalgo County, Texas; 817 North 5th Street. **(ZBA2021-0073) (TABLED: 01/19/2022)**

Mr. Jose Gutierrez made a motion to remove the item from the table. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously with five member present and voting.

Mr. Forghanparast stated the applicant was requesting a special exception request in order to allow encroachment into the front yard and north side yard setbacks for an existing metal carport for medical reasons. She was also applying for two variance requests to allow encroachments into the rear and north side yard setbacks for an existing metal garage. The rear portion of the carport was enclosed; therefore, it would be considered a garage and required a variance.

The subject property was located on the west side of North 5th Street, 304.8 ft. south of Jasmine Avenue. The property had 60 ft. of frontage along North 5th Street and a depth of 138 ft. according to the submitted warranty deed for a lot size of 8,280 sq. ft. The surrounding land use was single-family residence.

Hidalgo County Appraisal District records showed that the residential home was built in 1966 and the carport and enclosed garage was constructed in 2016. In December 2021, the applicant came to the Planning Department and mentioned that she had received a notice from the City to apply for a building permit for a carport built without a permit. A building permit application for the existing metal structure was submitted on December 8, 2021. An application for special exception requests for the existing carport was submitted on December 10, 2021.

Request #1 was for a special exception to allow an encroachment of 11 ft. into the 25 ft. front yard setback for an existing metal carport measuring approximately 111 ft. by 13 ft. The carport was constructed over the existing drive way and attached to the house. Front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view of properties in a subdivision. Carports were not permitted to be located within the front yard setbacks.

Request #2 was for a special exception to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal carport measuring approximately 111 ft. by 13 ft. The carport was constructed over the existing drive way, attached to the house, and extends to the north property line, with no overhang to the adjacent property to the north according to the applicant. Carports are not permitted to be located within the side yard setbacks.

Request #3 was for a variance to allow an encroachment of 6 ft. into the 6 ft. side yard setback along the north property line for an existing metal garage measuring approximately 15 ft. by 13 ft. During the site visit, staff noticed that approximately the rear 15 ft. of the metal carport is enclosed; therefore, it will be considered a garage and requires a variance. A garage was not allowed to be located within the side yard setback. Staff received a letter from the applicant stating that they would remove the south wall of the garage, essentially making the structure a carport and changed the request to a special exception.

Request #4 was for a variance to allow an encroachment of 10 ft. into the 10 ft. rear yard setback for an existing metal garage measuring approximately 15 ft. by 13 ft. During the site visit, staff noticed that approximately the rear 15 ft. of the metal carport was enclosed; therefore, it will be considered a garage and required a variance. A garage was not allowed to be located within the rear setback. Staff received a letter from the applicant stating that they would remove the south wall of the garage, essentially making the structure a carport and changed the request to a special exception.

Approval of the building permit application was pending approval of this application.

Staff had not received a phone call or email in opposition to the special exception and variance requests. Staff has received two letters in support of the request from the adjacent neighbors to the north and south of the subject property after the Zoning Board of Adjustment meeting of January 19, 2022.

Staff recommended approval of the special exception. If the Board chooses to approve the requests, the approval should be limited to the encroachments shown on the submitted site plan.

At the Zoning Board of Adjustment meeting of January 19, 2022, the Board unanimously voted to table the item with 5 members present and voting after an executive session to give the applicant an opportunity to modify the request. After the meeting, the applicant provided two letters in support of the request from the adjacent neighbors to the north and south of the subject property.

Mr. Hugo Avila <u>moved</u> to approve the special exceptions as recommended by staff. Mr. Ann Tafel seconded the motion. The Board voted to approve the special exceptions with five members present and voting.

b) Request of Juan Gama for the following special exception to the City of McAllen Zoning Ordinance to allow: 1) an encroachment of 12 ft. into the 20 ft. front yard setback for a proposed metal carport measuring 15 ft. by 31 ft., and 2) encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for a proposed metal carport measuring 15 ft. by 31 ft., at Lot 10, Block 4, Nelson Addition to McAllen, Hidalgo County, Texas; 900 South 15th Street. (ZBA2021-0074)

Mr. Forghanparast stated the applicant was requesting a special exception in order to allow encroachment into the front yard and north side yard setbacks for a proposed metal carport

for an existing fourplex to protect the tenant's vehicles from the weather elements.

The subject property was located on the southwest corner of South 15th Street and Ithaca Avenue. The property had 50 ft. of frontage along South 15th Street and a depth of 140 ft. for a lot size of 7,000 sq. ft. according to the subdivision plat. The surrounding land use was residential and commercial.

A variance request for a lot size of 7,000 sq. ft. instead of 7,800 sq. ft. for a proposed fourplex for the subject property was approved on November 17, 2016 by the Zoning Board of Adjustment. Hidalgo County Appraisal District records show that the fourplex was built in 2018. A building permit for the existing metal carport covering 4 parking spaces on the south side of the subject property was approved and built in 2021 and in compliance with setback requirements. An application for a special exception request for the proposed carport to cover three parking spaces on the northeast side of the property was submitted on December 17, 2021.

Request #1 was for a special exception to allow an encroachment of 12 ft. into the 20 ft. front yard setback for a proposed metal carport measuring 15 ft. by 31 ft. The carport was proposed to be constructed over three existing parking spaces. The carport would serve as an amenity for the existing fourplex on the property.

Request #2 was for a special exception to allow an encroachment of 10 ft. into the 10 ft. side yard setback along the north property line for a proposed metal carport measuring 15 ft. by 31 ft. The carport was proposed to be constructed over existing three parking spaces, and extend to the north property line, with no overhang. Section 138-368(a) of the Zoning Ordinance required that the width of the side yard along the street shall not be less than ten feet provided that the buildable width of such a lot of record shall not be reduced to less than 38 feet. The strict application of this requirement would create a possible hardship.

Staff had not received a phone call or email in opposition to the special exception request.

Staff recommended approval of the special exception request limited to the encroachment shown on the submitted site plan since this is for an existing development, the carport is open on all sides and will not hinder the visibility for traffic, and strict application of 10 ft. corner setback would reduce the buildable area of the lot to less than 38 feet.

Mr. Jose Gutierrez asked staff what would the possible hardship that could be created. Mr. Forghanparast stated according the Zoning Ordinance the side setback on corner lots was 10 feet but the condition was that the buildable area would not be reduced less than 38 feet. In order to avoid the hardship they needed the encroachment into the side yard setback.

Mr. Juan Gama, 4216 Stillwater Cove, Edinburg, was present at the meeting. The applicant stated he was requesting a carport to benefit the tenants by providing more shade to their vehicles and enhancing the property with more curb appeal.

Mr. Hugo Avila asked staff given approval the applicant would still have to go through the

permit process to build it and get it inspected. Mr. Forghanparast stated yes.

Acting Chairperson Sylvia Hinojosa asked if there was anyone present in opposition of the special exception. There was no one in opposition of the special exception.

Following discussion, Ms. Ann Tafel **moved** to approve the special exception as recommended by staff. Mr. Jose Gutierrez seconded the motion. The Board voted to approve the special exception with five members present and voting.

c) Request of Lucas Castillo for the following special exception to the City of McAllen Zoning Ordinance to allow 4 parking spaces instead of 11 required parking spaces for a proposed office building at Lot 6A, McAllen Townsite Lot 6-A, Block 47 Subdivision, Hidalgo County, Texas; 500 South 11th Street. (ZBA2021-0075)

Mr. Forghanparast stated the applicant was requesting a special exception from the City of McAllen Off-street Parking and Loading Ordinance to provide 4 parking spaces instead of the required 11 parking spaces for an office building due to space limitation.

The property was located on the southwest corner of 11th Street and Erie Avenue. The lot had 50 ft. of frontage along South 11th Street and 108 ft. of depth for a lot size of 5,400 sq. ft. The property was zoned C-3 (general business) District and was currently vacant. The adjacent zoning was C-3 (general business) District on all directions. The surrounding land uses include Anny's Flower Shop, single-family residences, Taco Bell restaurant, and offices.

McAllen Townsite Lot 6-A, Block 47 Subdivision was recorded on May 5, 2021. An application for a building permit for 1,600 sq. ft. of proposed office use for the subject property was pending the special exception request. An application for a special exception request was submitted on December 20, 2021.

The establishment was proposed to have 1,600 sq. ft. of office space. Section 138-395 of the Zoning Ordinance requires four parking spaces for up to 200 square feet of floor area, plus one parking space for each additional 200 square feet of floor area. Therefore, 11 parking spaces for the proposed office use will be required. The request was to provide 4 parking spaces due to lot area limitation. Approval of 4 parking spaces will leave only one off-street parking space for the customers. The applicant stated that the proposed office would be for Atlas Engineering, which had three employees, and the customers will visit the office by appointments only. The applicant stated that he had tried leasing parking spaces from other properties in vicinity but was unsuccessful.

Staff had not received any phone calls or emails in opposition to the special exception request.

Staff recommended disapproval of the special exception request since approval of 4 parking spaces will leave only one off-street parking space for the customers. However, the strict application of the Zoning Ordinance requirements to provide the minimum off-street parking on-site may create hardship to the applicant.

Mr. Jose Gutierrez asked Legal why this item was a special exception. Mr. Austin Stevenson, Legal stated anytime they are doing a special exception to the Zoning Ordinance those are the ones we have to carve out for tree houses and carports. This was parking which we include in our zoning it was in that same area of the Code but we are not going to amend anything that was related to Zoning. Sometimes we can give special exceptions for landscaping and a few other things.

Mr. Hugo Avila asked Legal what happens if Atlas Engineering decides to sell the building and it becomes a shop. Mr. Stevenson stated it would be a change of use and the new tenant needs to apply for a special exception. If the engineering firm sells it to another engineering firm, the special exception would stay the same.

Acting Chairperson Hinojosa asked staff if they discussed other options that they could do. Mr. Forghanparast stated the other option was to get a parking agreement. The applicant had stated that they had tried with other properties in the vicinity but were unsuccessful. Acting Chairperson stated she had concerns with the parking issue. Mr. Forghanparast stated it was a portion of a lot therefore; they had gone through the subdivision process, which was approved in 2021. Then they went through the building permit and resolved all issues. They only thing that they could not provide because of the space they had was the parking. They mentioned that they rarely have customers visiting them and would be based on appointments.

Mr. Rogelio Rodriguez asked staff if there was any Conditional Use Permit they could have that would be monitored yearly on the traffic, parking of any sort. Chairperson stated this had nothing to do with the Conditional Use Permit.

Mr. Lucas Castillo, the applicant stated they were a testing lab. They worked for small business owners. Most of the time they are out in the field to visit the customers. Occasionally they would get customers in their office. Mr. Castillo stated they were planning on opening up another office in Harlingen for the main testing lab. He stated he tried to buy the property in the back but they were not selling. For the property on the south side, they asked to see if she was willing to sell but they did not want to sell. Chairperson asked the applicant if they were not interested in giving you a contract to park. Mr. Castillo stated the ones on the south side only had four parking spaces in the back alley. Chairperson asked about the empty property. Mr. Castillo stated he did not ask them because that the property that he purchased belonged to them but lost it in a foreclosure.

Mr. Rogelio Rodriguez asked the applicant if they had any company vehicles. Mr. Castillo stated they had one company vehicle, which his assistant would be able to take home.

Acting Chairperson Hinojosa had concerns with parking on the street as it was an old neighborhood and the streets were narrow.

Ms. Erica de la Garza-Lopez asked staff if the office building were smaller, would there be an issue with parking. Mr. Forghanparast stated yes, smaller offices would have lower parking requirements. However, it may not be able to get it down to four parking spaces. For

four parking spaces, the maximum they would allow was 200 square feet of office anything more than would require more parking spaces. Chairperson Hinojosa what was the 24 feet in front of the parking spaces. Mr. Forghanparast stated the 24 feet was for maneuvering space because it not allowed backing up into the street.

Mr. Castillo stated they tried to have parking in the back but could not back out onto the street and needed maneuvering space to turn around.

Mr. Rodriguez asked staff if there was any other; option for the owner to open up some other type of business that would meet the actual parking requirements. Mr. Forghanparast stated the owner needed the space for their office use this was why they subdivided the property for their proposed use. However, the lowest parking requirement for commercial would be retail. Even retail would need a special exception because at this size they would need more parking spaces.

Acting Chairperson Sylvia Hinojosa asked if there was anyone present in favor of the special exception. There was no one else in favor of the special exception.

Acting Chairperson Sylvia Hinojosa asked if there was anyone present in opposition of the special exception. There was no one in opposition of the special exception.

Acting Chairperson Hinojosa asked staff when viewing the actual square footage was all of it viewed or just what was the consulting area. Mr. Forghanparast stated what they do was they calculated off the whole building. When they are not able to provide a number of parking spaces, staff tries to work with the applicants by removing some of the spaces like storage or hallways. However, on this property when they remove those spaces, it came down to nine parking spaces, but the applicant could only provide four.

Following discussion, Mr. Jose Gutierrez **moved** to disapprove the special exception. Mr. Rogelio Rodriguez seconded the motion. The Board voted to disapprove the special exception with three members voting aye and two members voting nay, Mr. Hugo Avila and Ms. Ann Tafel.

3. INFORMTION ONLY:

a) Election of Officers

Mr. Jose Gutierrez nominated Ms. Sylvia Hinojosa as Chairperson. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously with five Board members present and voting.

Ms. Ann Tafel nominated Mr. Jose Gutierrez as Vice-Chairperson. Mr. Rogelio Rodriguez seconded the motion. The Board voted unanimously with five Board members present and voting.

4. FUTURE AGENDA ITEMS:

a) 3013 Covina Avenue

ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Acting Chairperson Sylvia Hinojosa **moved** to adjourn the meeting.

Acting Chairperson Sylvia Hinojosa

Carmen White, Administrative Assistant

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Wednesday, February 17, 2022 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

Present":	Sylvia Hinojosa Jose Gutierrez Ann Tafel Hugo Avila Rogelio Rodriguez Rebecca Millan Mark Talbot	Chairperson Vice-chair Member Member Alternate Alternate
Staff Present:	Austin Stevenson Edgar Garcia Rodrigo Sanchez Porfirio Hernandez Julian Hernandez Natalie Martinez	Assistant City Attorney Planning Director Senior Planner Planning Technician II Planning Technician I Administrative Assistant

CALL TO ORDER – Chairperson Sylvia Hinojosa

1. MINUTES:

a) Minutes for the meeting held on February 2, 2022

The minutes will be uploaded to the next meeting

2. PUBLIC HEARINGS:

a) Ms. Sanchez stated the applicant was requesting for an existing wooden covered porch to remain in its current location encroaching into the rear and side yard setbacks at the rear of the subject property. The applicant purchased the residence in 2021, and subsequently the father of the applicant built the existing wooden covered porch with bathrooms. The applicant's father was unaware that a building permit was required prior to building the existing wooden covered porch with bathrooms.

The subject property was located on the south side of Covina Avenue. The property had 96 feet of frontage along Covina Avenue and a depth of 110 feet for a total lot size of 10,560 square feet. The zoning for the property and adjacent zoning was R-1 (single-family residential) District in all directions. Surrounding land uses include residential homes.

Balboa Acres Subdivision was recorded in January 1963. An application for a variance request was submitted in January 2022. An application for a building permit had not been submitted.

Variance request #1 was to allow an encroachment of up to 4.5 feet into the 10 feet rear yard setback. The existing wooden covered porch with bathrooms measured 20 feet by 51 feet for a total area of 1,020 square feet.

Variance request #2 was to allow an encroachment of up to 2.8 feet into the 6 feet side yard setback along the east side of the subject property.

A cedar fence obscured and buffers the view of the rear yard and the existing wooden covered porch with bathrooms. A 20 feet alley was located along the rear property that provided additional separation for public safety purposes to the residence to the south.

According to the applicant, the existing wooden covered porch with bathrooms was an area that the applicant and her family used for recreational purposes. The father of the applicant built the existing wooden covered porch with bathrooms as a gift to the applicant and her family to use for their enjoyment. As per the applicant, the outside bathrooms were used when entertaining guests.

The porch and bathrooms are built over an existing concrete foundation and compliance would involve a re-design and re-construction of the structures in order to reduce the encroachments for compliance.

During a site visit, staff noticed other encroachments along the front and rear yards within Balboa Acres Subdivision. A review of Planning Department records revealed other approved variances within the subdivision in the past.

There were no utility easements along the rear or side of the subject property.

Measurements provided were without benefit of a survey.

Staff had received one phone call in support of the variance requests.

Staff recommended approval of the variance requests since there were existing encroachments which were characteristic to the area, a 20 feet alley provided additional building separation to the south, a 6 feet cedar fence obscured and buffers the rear yard and the existing wooden porch with bathrooms, and financial cost of compliance may be greater than 50 percent of the value of the structure. The encroachments would not allow the essential character of the neighborhood especially since the lots were large. If the Board grants approval of the requests it should be limited to the encroachments shown on the submitted site plan.

Board member Jose Gutierrez asked staff if the existing porch and bathroom comply with the cities construction requirements. Ms. Sanchez responded that the applicant had not submitted a building permit and must to undergo review of building permit and planning

department. It is encroaching into the setbacks.

Mr. Austin Stevenson, legal stated that the building permit would not issue them a permit unless the variance is granted.

Board member Hugo Avila asked staff that it was a big structure and if it is a wooden structure. Ms. Sanchez stated yes.

Board member Jose Gutierrez asked the applicant when was the porch constructed. Ms. Soila B. Valdez stated that it was constructed in 2015-2016.

Board member Avila asked the applicant when they were doing construction on the porch, they did not think about applying for a permit. Ms. Valdez stated her father was unaware of applying for a building permit.

Mr. Avila stated that you could get a permit for construction but that they have limits so you do not surpass and the reason for that is to protect the neighbors. The back area is an alley and it has a large separation.

Ms. Sanchez stated that subsequently to purchasing the residence, there were no utilities, nor easements on the property.

Board member, Juan Mujica, asked the applicant Ms. Valdez if the porch was already constructed.

The applicant stated no that the floor was the only thing there and her father told her why not construct on it and thought that the pervious person had a permit already for it.

Mr. Avila stated that you can construct and get a permit but only if it is within the limits. If they want to do it smaller they would still need a permit and that, all the regulations are to all neighbors to do things right or else, there will be problem.

Ms. Hinojosa asked staff as long as they use the same structure but replace it with new product, they would not need a permit.

Mr. Edgar Garcia, Director stated that they do need a permit to make sure the structure and product is safe and in compliance.

Board member Saldivar wanted clarification on the encroaching area. Ms. Sanchez responded both, the porch or restrooms.

Mr. Avila asked a question for staff, the neighbor to the side, what is the actual structure fence line. How close are they. Ms. Sanchez stated that it appears that the actual structure itself is slanted. There is an approximately 2 feet or 3 feet of distance to the neighbor's property.

Board member Tafel asked a question for staff, if the porch was free standing or attached

to the house. Ms. Sanchez stated that there was an attachment to the home.

Mr. Avila asked a question for staff when it comes to approve recommendation of a variance based on the fact that other variances have been approved in the same area. Ms. Sanchez stated that they do take that into consideration. They check the similar encroachments; they also see other factors involved.

Chairperson Sylvia Hinojosa asked if there was anyone present in favor of the variance requests. There was no one else in favor of the variance request.

Chairperson Sylvia Hinojosa asked if there was anyone present in opposition of the variance request. There was no one in opposition of the variance request.

Ms. Ann Tafel **moved** to approve the variance request as per staff's recommendation. Mr. Hugo Avila seconded the motion. The Board voted to approve the variance request with four members voting aye and one nay, Mr. Rogelio Rodriguez.

4. FUTURE AGENDA ITEMS:

- a) 3008 La Vista Avenue
- b) 416 E. Ridgeland
- **c)** 1106 N. 17th street
- d) 2001 Industrial Drive

ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Chairperson Sylvia Hinojosa **moved** to adjourn the meeting.

Chairperson Sylvia Hinojosa

Natalie Martinez, Administrative Assistant

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: February 10, 2022

SUBJECT: REQUEST OF TERESA C. GUTIERREZ AND JOSE M. GUTIERREZ, JR. FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE TO ALLOW: 1) AN ENCROACHMENT OF 20 FT. INTO THE 20 FT. FRONT YARD SETBACK FOR AN EXISTING METAL CARPORT MEASURING 11.41 FT. BY 22.25 FT. 2) TO NOT PROVIDE ONE REQUIRED PARKING SPACE BEYOND THE FRONT YARD SETBACK AT LOT 43, LA LOMITA ESTATES SUBDIVISION, HIDALGO COUNTY, TEXAS; 3008 LA VISTA AVENUE. (ZBA2022-0002)

REASON FOR APPEAL:

The applicant is requesting a special exception for an encroachment into the front yard setbacks in order to allow an existing metal carport to remain in its current location. The carport measures 11.41 feet by 22.25 feet. According to the applicant, the carport was built to accommodate their child who is disabled and often times needs the assistance of a wheelchair to get off the vehicle. The applicant was informed by her next door neighbor that no permit was required. The applicant was also unsure as to how to proceed with the application process due to the COVID-19 pandemic. The applicant has a child with underlying health issues that could put him at a higher risk of severe symptoms of COVID-19. The applicant would like the structure to remain because the existing carport provides protection from the weather elements.



PROPERTY LOCATION AND VICINITY:

The subject property is located on the North side of La Vista Avenue. The property is located 50 feet from 31st Street the lot size is 5,500 sq. feet according to the subdivision plat. The surrounding land use is single-family residential, duplex - fourplex, apartments and agriculture open space and agriculture open space.

BACKGROUND AND HISTORY:

The property is located along the north side of La Vista Avenue, approximately 50 feet east of North 31st Street. The property has 50 feet of frontage along La Vista Avenue with a depth of 110 feet for a total area of 5,500 square feet. There is a single-family residence on the subject property. The property is zoned R-1 (single family residential) District. Adjacent zoning is R-1 (single family residential) District in all directions and R-3A (multifamily apartments) District to the northwest. The surrounding land use is single family residential. In 2015 a building permit was approved for this address to install spray insulation in the attic.

ANALYSIS:

Request is for a special exception to allow an encroachment of 20 feet into the 20 feet front yard setback for an existing metal carport measuring 11.5 feet by 22.3 feet over an existing driveway. The carport is not enclosed which allows for visibility when entering or exiting the property, since the car port is located 11 feet from the curb it does not pose any obstruction to traffic.

The current garage was closed off 25 years ago and converted into living space, a common characteristic of the homes in the neighborhood. As per applicant, the extra living space is used to keep the child's hospital bed and medical equipment due to his health conditions. The applicant has since widened the drive way to meet the 18 foot requirement by placing concrete pavers, and has proposed to widen the driveway with concrete in the future.

There is no alley access on the subject property.

During the site visit, staff noticed other similar encroachments, specifically carports located at the front yard, along La Vista Avenue; there are four other encroaching carports, along with three carports in the neighboring streets of Walnut Avenue and N 31st Street. The metal carport on the subject property is a characteristic of construction along the area. A review of the Planning Department records did reveal four special exceptions on La Vista the most recent on January 2022, and the other on December 2021, the other two date back to 2016 and 2019.

There are no utility easements along the front side of the property.

Special exceptions are issued to an individual and recorded, however if new owner purchases the home they will have to apply as new owner.

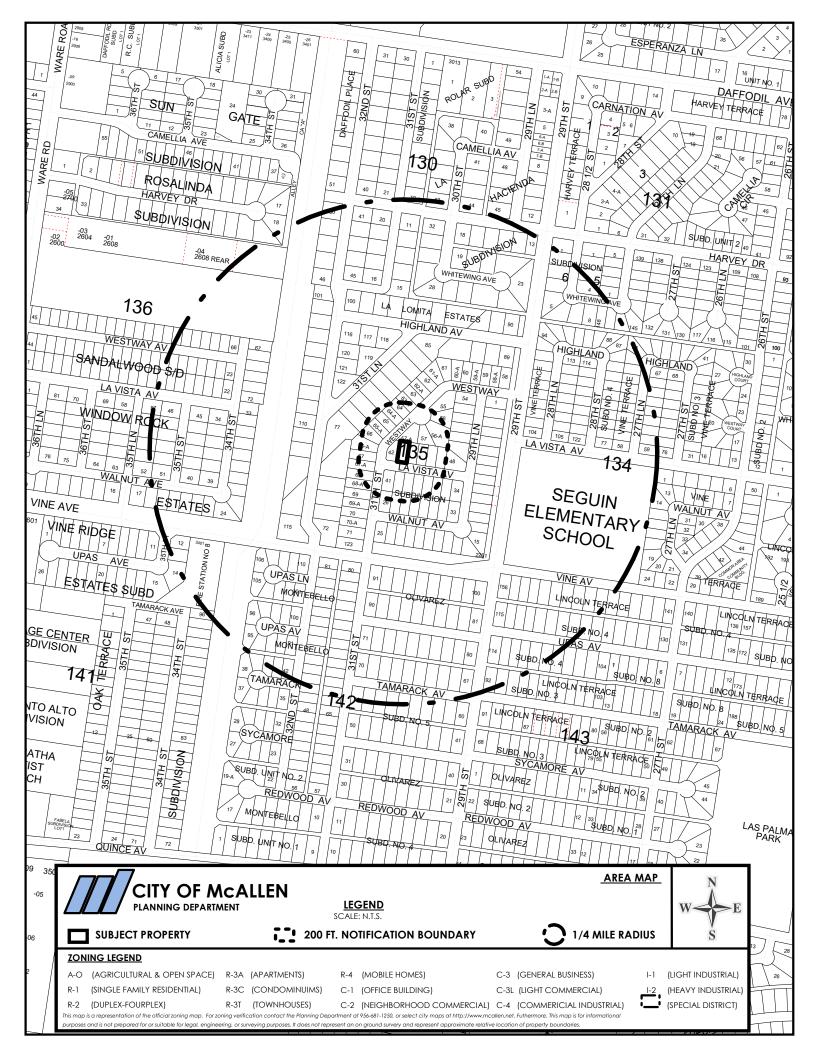
RECOMMENDATION:

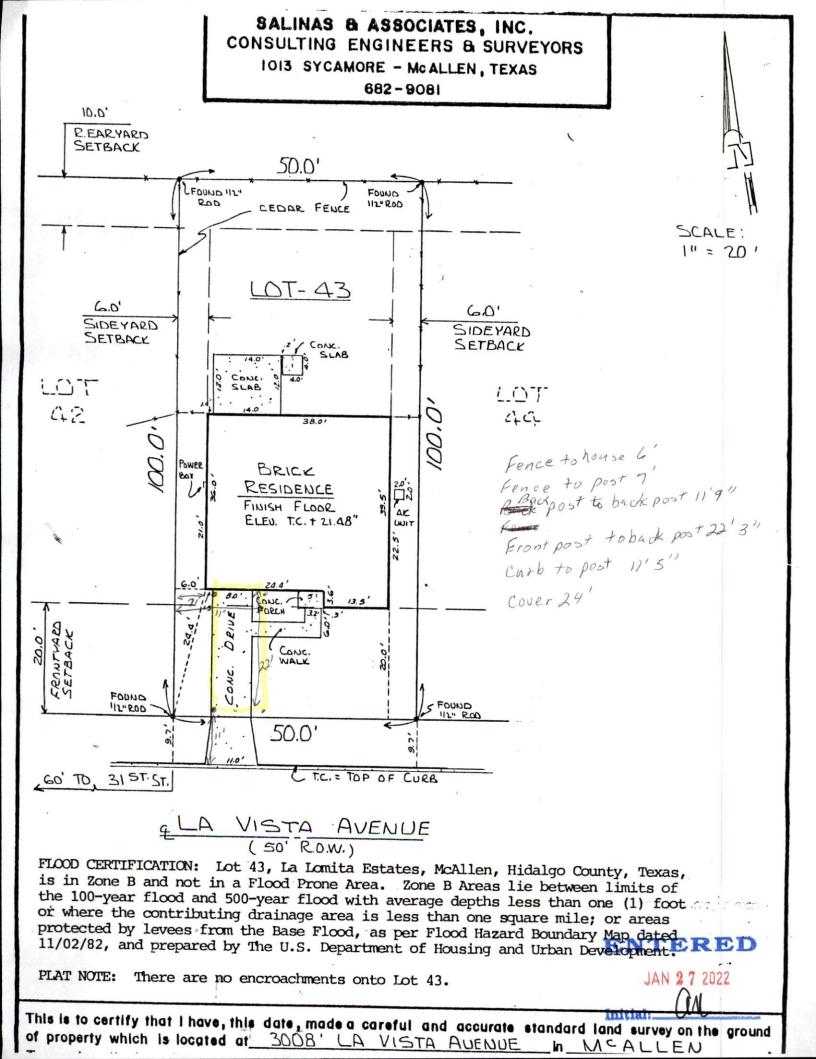
Staff recommends approval of the special exception request of the existing carport since it is a common characteristic within the neighborhood. However, if the Board approves the request it should be limited to the encroachment shown in the submitted site plan.

26A202-002

	2 DH01080- UVE
26A.	3 3 22 City of McAllen <i>Planning Department</i> APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE 311 North 15 th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)
Project	Legal Description <u>La Comita Estates Lot 43</u> Subdivision Name <u>La Lomita Estates</u> Street Address <u>3008 La Vista Ave</u> Number of lots <u>I</u> Gross acres Existing Zoning <u>Recidencial</u> Existing Land Use <u>ICasa</u> ' Reason for Appeal (please use other side if necessary) <u>Por che de lamina 23'.3</u> ^{III} <u>+11¹ 5¹¹ 5¹⁰ 5¹⁰ 60 nsTruyo dentro de los 20 Pies de lanteres</u> \$\$ \$300.00 non-refundable filing fee + \$\$\$50.00 Recording Fee for Special Exception (carport) Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required Teresa 5: Gutierrer
Applicant	Teresa C. Gutierrit Name Jose M. Gutierrit Name Jose M. Gutierrit Address 3008 La Uista Are E-mail gutierrit Address 3008 La Uista Are E-mail gutierrit 4442@att.net City Mª Allen State TK Zip 7850/
Owner	Name Jose M. + Teresa C. Gutierrez Phone <u>954-682-0371</u> Address <u>300 8 La Vista Ave</u> E-mail <u>gutierrig 44126a+t. Net</u> City <u>McAllen</u> State <u>TY</u> Zip <u>78501</u>
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? □ Yes ☑ No I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization. Signature
Office	Accepted by MA Payment received by Patrecet by
729	Initial: UM
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	City of McAllen
	Planning Department
	REASON FOR APPEAL & BOARD ACTION
Reason for Appeal	 *A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board of Adjustment will consider any combination of the following: (Please use an additional page if necessary to complete responses). **Information provided here by the applicant does not guarantee that the Board will grant a variance. ***Applicant should include all information they determine is relevant, but it is not required to provide responses to all sections listed below. 1. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land: \$\mathbf{P} or Coesting the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land: \$\mathbf{P} or Coesting the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land: \$\mathbf{P} or Coesting the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land: \$\mathbf{P} or Coesting the special circumstance or condition affecting the land involved such that the strict application of the provisions required to provide responses to all sections the variance would be prive the applicant of the reasonable use of the land: \$\mathbf{P} or Coesting the construction of the provisions required to provide responses to all sections the provide responses to all the provide sections the variance would be prive the provide section of the provide responses to provide the variance would be prove t
Board Action	Chairman, Board of Adjustment Date Signature
	Rev. 9/20

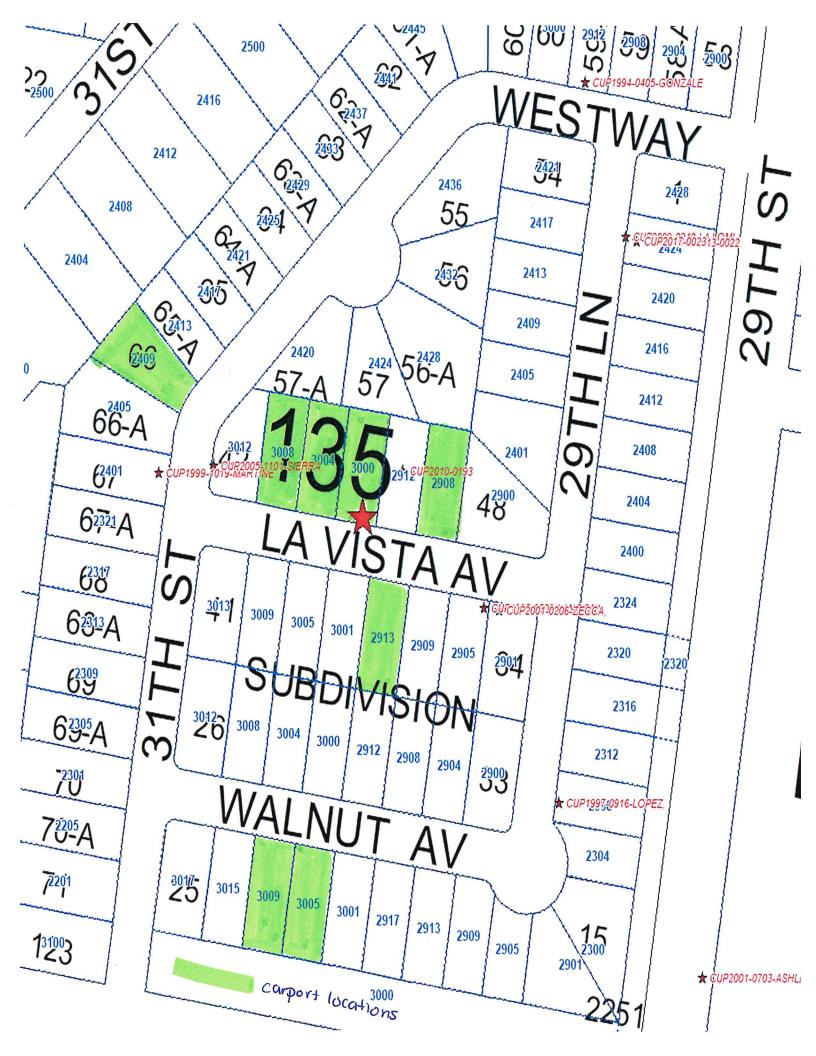












ITEM 2B WAS WITHDRAWN

Memo

TO: Zoning Board of Adjustment & Appeals

FROM: Planning Staff

DATE: February 23, 2022

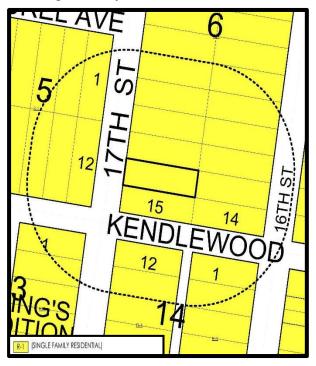
SUBJECT: REQUEST OF DARYL J. MINOR FOR THE FOLLOWING SPECIAL EXCEPTION TO THE CITY OF MCALLEN ZONING ORDINANCE: 1) TO ALLOW AN ENCROACHMENT OF 35 FT. INTO THE 35 FT. FRONT YARD SETBACK ALONG THE WEST PROPERTY LINE AND 2) TO ALLOW AN ENCROACHMENT OF 7 FT. INTO THE 7 FT. SIDE YARD SETBACK ALONG THE SOUTH PROPERTY LINE FOR AN EXISTING METAL CARPORT MEASURING 11 FT. BY 35 FT., AT LOT 16, BLOCK 6, MILMOR ADDITION TO MCALLEN SUBDIVISION, HIDALGO COUNTY, TEXAS; 1106 NORTH 17TH STREET. (ZBA2022-0005)

REASON FOR APPEAL:

The applicant is requesting a special exception to allow an encroachment of 35 ft. into the 35 ft. front yard setback and 7 ft. into the 7 ft. side yard setback along the south property line for an existing metal carport. The existing carport is used to protect the applicant from inclement weather because of his medical conditions.

PROPERTY LOCATION AND VICINITY:

The subject property is located on the east side of North 17th Street. The lot has 50 ft. of frontage along North 17^h Street with a depth of 152.5 ft., for a lot size of 7,625 sq. ft. The surrounding land use is single-family residences.





BACKGROUND AND HISTORY:

Milmor Subdivision was recorded on May 26, 1927. The plat does not indicate setbacks. The applicable setbacks were subject to the 1945 Zoning Ordinance as has been the practice in the past when applying setbacks to subdivisions recorded prior to 1979. The front yard setback shall be 35 feet. The side yard setbacks are 5 feet on the north side and 7 feet along the south side yard. The rear yard setback under the 1945 Zoning Ordinance was 3 feet for accessory buildings, however the rear yard setback requirement changed to 10 feet under the 1979 zoning ordinance.

A stop work order for building without a permit was issued on December 09, 2020. The applicant submitted an application for a building permit on December 14, 2020. An application for a variance request was submitted on December 10, 2020. The requests were presented before the Zoning Board of Adjustments and Appeals at their meeting of February 03, 2021, were the requests were disapproved. The Board cited concerns with the variance request classification and visibility, as variances go with the land and approval would allow for future construction on the requested footprint. Since then the applicant has submitted a new application to be considered as a special exception request.

ANALYSIS:

At the time the case was initially presented carports that were placed in the front yard and that encroached into side yard setbacks were considered to be variances and could not be classified as special exceptions however, a subsequent determination by the City's Legal Department has now included carports with side yard encroachments as special exception requests.

The special exception request is to allow an encroachment of 35 ft. into the 35 ft. front yard setback and an encroachment of 7 ft. into the 7 ft. side yard setback along the south property line for an existing metal carport measuring 11 ft. by 35 ft.

An inspection by the Planning Department staff revealed there are existing carports and structures with encroachments into the side yard and rear yards built around Milmor Addition to McAllen Subdivision.

The applicant stated that the reason for the carport is his health.

There are no utility easements inside the property.

Staff has not received any emails or phone calls in opposition of the request.

RECOMMENDATION:

Staff recommends approval of the special exception request. If the Board chooses to approve the request, the approval should be limited to the encroachments shown on the submitted site plan.

2BA - 3 3 22

	City of McAllen Planning Department APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE	50 (fax)
	Legal Description Milmor Lot 16, Blk 6	
	Subdivision Name	
Project	Street Address	
[o	Existing Zoning	
ā.	Reason for Appeal (please use other side if necessary) Seeking a carport special exception from City se requirements.	etback
	 Image: State Stat	n (car
*	Dept Land Marcia Misor Dhome (956) 483-1038	
5	Name Daryl J. and Marcia Minor Phone (956) 483-1038	
Applicant	Name Daryl J. and Marcia Million Phone Cory Parallel Address 1106 North 17th Street E-mail darylminor@yahoo.com City McAllen State Texas Zip 78501	
	Address 1106 North 17th Street E-maildaryIminor@yahoo.com City McAllen State Texas	
	Address 1106 North 17th Street E-mail daryIminor@yahoo.com City McAllen State Texas Zip 78501 Name Daryl J. and Marcia Minor Phone (956) 483-1038	
Owner Applican	Address 1106 North 17th Street E-maildaryIminor@yahoo.com City McAllen State Texas Zip 78501 Name Daryl J. and Marcia Minor Phone (956) 483-1038	
vner	Address 1106 North 17th Street E-maildaryIminor@yahoo.com City McAllen State Texas Zip 78501 Name Daryl J. and Marcia Minor Phone (956) 483-1038 Address 1106 North 17th Street E-mail daryIminor@yahoo.com	ants, cable)

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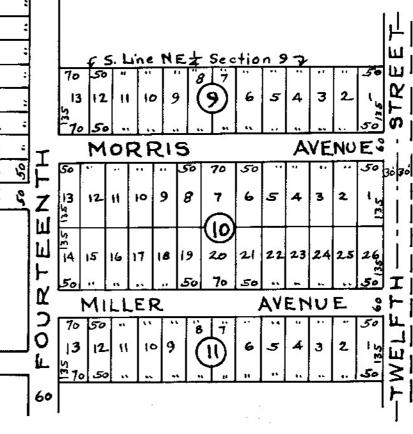
	City of McAllen
	Planning Department
	REASON FOR APPEAL & BOARD ACTION
an an ann bannn	 *A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely or economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board or Adjustment will consider any combination of the following: (<i>Please use an additional page if necessary to complete responses</i>) **Information provided here by the applicant does not guarantee that the Board will grant a variance. ***Applicant should include all information they determine is relevant, but it is not required to provide response to all sections listed below. Describe the special circumstance or condition affecting the land involved such that the strict application of the provisions required would deprive the applicant of the reasonable use of the land:
	My driveway is in the same location and it would be in violation of City Ordinance to relocate it or put a driveway in
	another area.
pe	2. Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of the
Ap	owner:
or	Due to my numerous health conditions pertaining to my lung damage, the approval of the special exception would
son 1	help to prevent medical complications.
Reason for Appeal	 Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the legarights other property owners enjoy in the area:
	Since the carport is not an enclosed structure, it does not block the view of neighbors or ourselves from exiting or
	entering any driveway.
	4. Describe special conditions that are unique to this applicant or property:
	The carport would help to protect the lungs that I have which are damaged from getting wet during rain and other
	climatic conditions.
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Board Action	Chairman, Board of Adjustment Date Signature
B	Rev. 9/20

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I, E.M. Card, a surveyor, do hereby Certify that the foregoing Map of Milmor Addition to McAllen, being a Resubdivision of Blooks 1 to 12 Inclusive of Ewings Addition to MCAllen, Texas out of the Witz of the Switz Section 9 and a subdivision 11.09 Acres Being the N.Et of the N.W t of the S.W Section 9, and 11.09 Acres being the NWA of the SEL of the SWA Section 9; all out of Hidalgo Canal Companys Subdivision of Porciones 64.65866 Hidalgo County, Texas, is a true and Greect plat of said lands as surveyed and Subdivided by me this 18 day of February 1927.



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Subscribed and sworn tobe before me. this 18 day of February 1927.

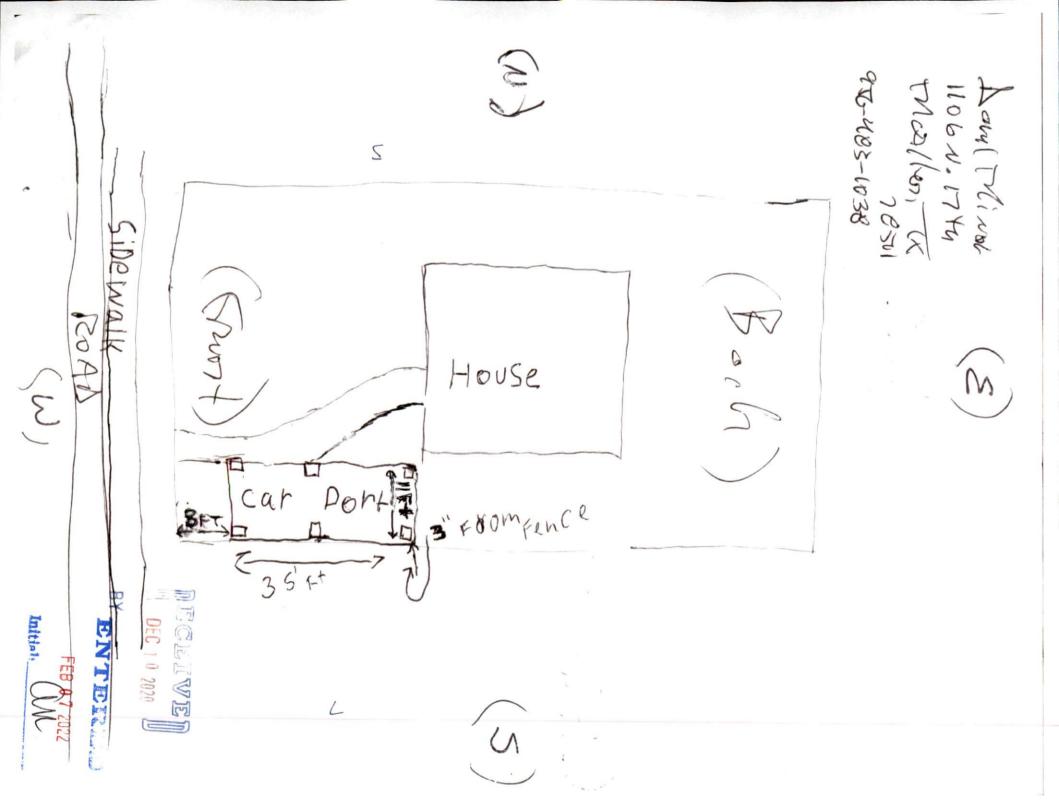
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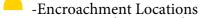
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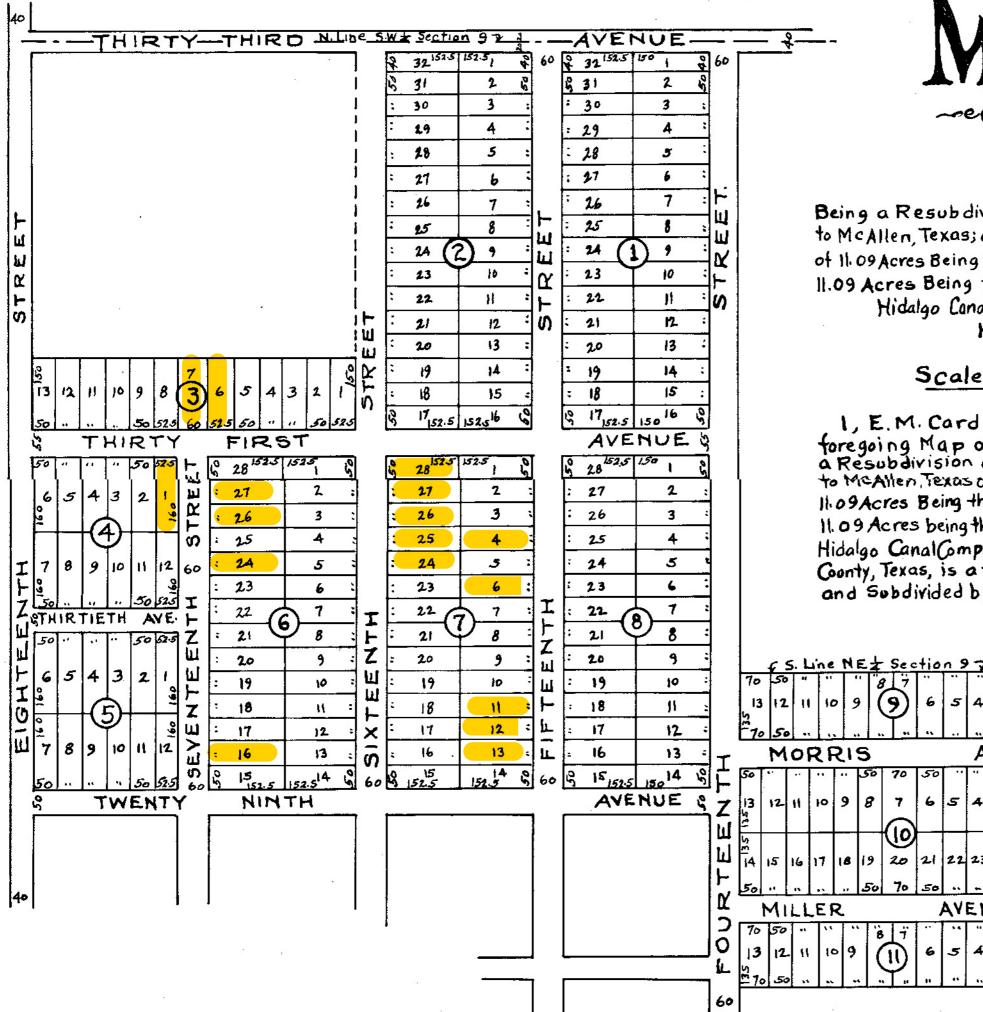
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Clerk County Court Hidalgo County Texas By 8.8. Rupp. Deputy

Recorded May 26th 1927 at 300look P.M.







to McAllen, Texas; out of the W12 of the S.W1 Section 9, and a subdivision of 11.09 Acres Being the NEZ of the NWZ of the SWZ Section 9 and ~ 11.09 Acres Being the N.Wt of the SEt of the S.Wt Section 9. all out of ~ Hidalgo Canal Gmpanys Subdivision of Porciones 64-658 66 HIDALGO COUNTY ~ TEXAS ? Scale 1 = 200ft February 1927.

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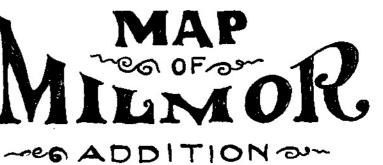
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I, E.M. Card, a surveyor, do hereby Certify that the foregoing Map of Milmor Addition to McAllen, being a Resubdivision of Blocks 1 to 12 Inclusive of Ewings Addition to MCAllen, Texas out of the Witz of the Switz Section 9 and a subdivision 11.09 Acres Being the N.Et of the N.W t of the S.W Section 9, and 11.09 Acres being the NW+ of the SE+ of the SW+ Section 9; all out of Hidalgo Canal Companys Subdivision of Porciones 64,65866 Hidalgo County, Texas, is a true and Greetplat of said lands as surveyed and Subdivided by me this 18 day of February 1927.



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Subscribed and sworn to be before me this 18 day of February 1927.

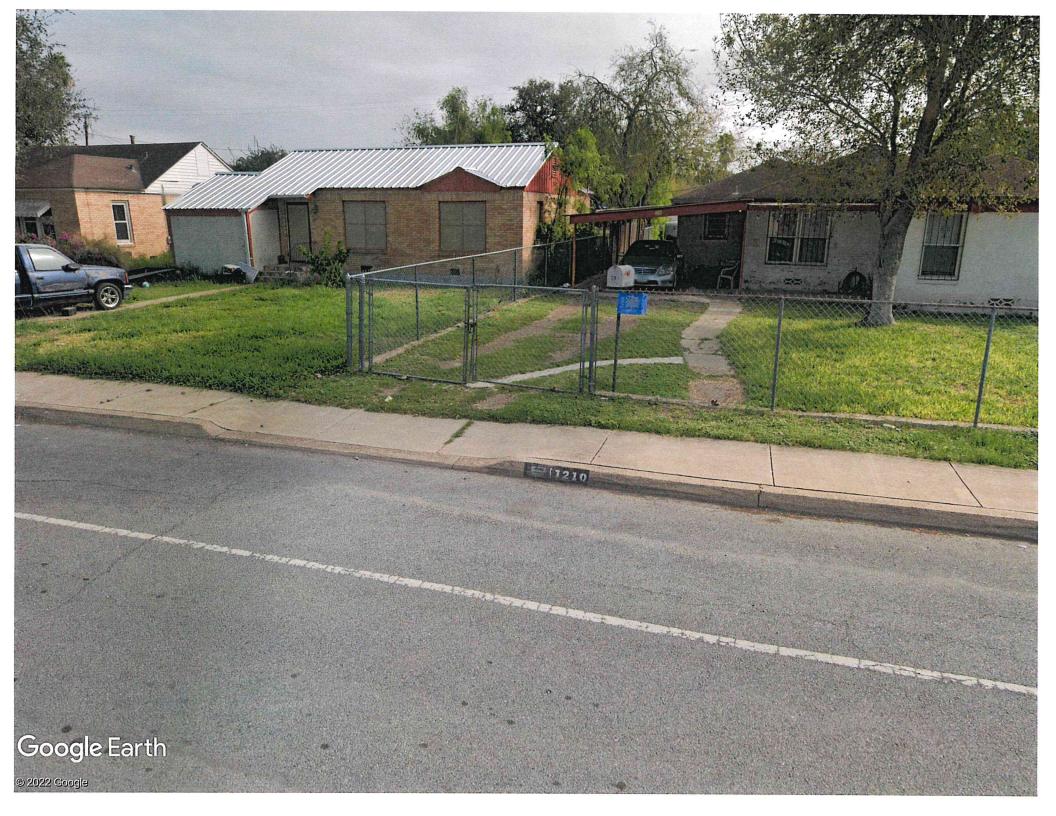
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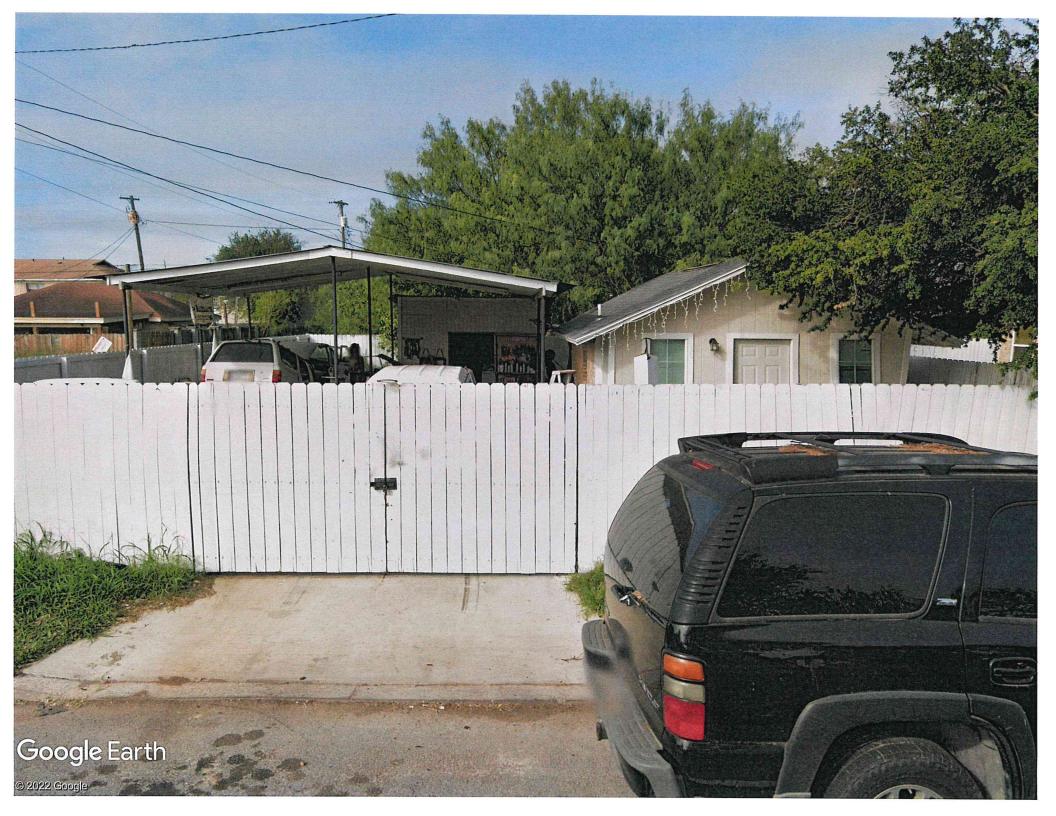
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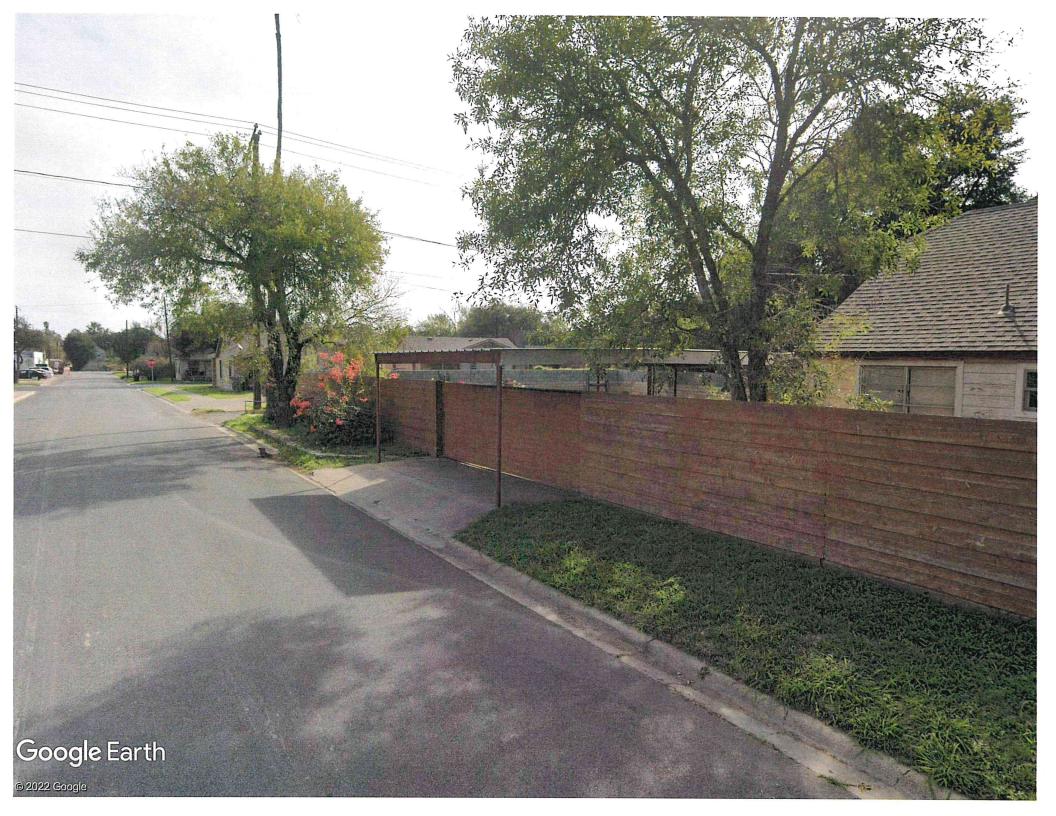
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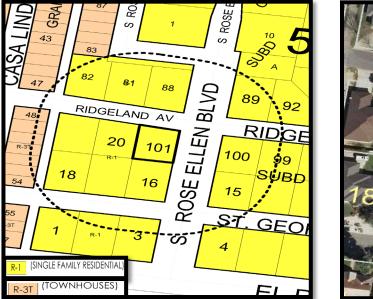


Memo

- **TO:** Zoning Board of Adjustment & Appeals
- FROM: Planning Staff
- **DATE:** February 24, 2022
- SUBJECT: REQUEST OF ROBERT FOUNTILA, MD ON BEHALF OF FOUNTILA INVESTMENTS, LLC FOR THE FOLLOWING VARIANCES OF THE CITY OF MCALLEN ZONING ORDINANCE: 1) TO ALLOW AN ENCROACHMENT OF 7 FEET INTO THE 25 FEET FRONT YARD SETBACK FOR AN EXISTING METAL GAZEBO (PORCH) MEASURING 10 FEET BY 10 FEET AND 2) TO ALLOW AN ENCROACHMENT OF 10.5 FEET INTO THE 25 FEET FRONT YARD SETBACK FOR AN EXISTING METAL GAZEBO (PORCH) MEASURING 10 FEET BY 16 FEET, AT LOT 101, FAIRWAY GRANDE VILLAGE UNIT NO. 2 SUBDIVISION, HIDALGO COUNTY, TEXAS; 416 EAST RIDGELAND AVENUE.(ZBA2022-0003)

REASON FOR APPEAL:

The applicant is requesting variances for two existing metal frame gazebos (porches) that encroach in the front yard. The applicant is requesting that the placement of the gazebos be allowed to remain since they provide shade and rain protection for the occupants of the residence.





PROPERTY LOCATION AND VICINITY:

The subject property is located at the Southwest corner of the intersection of South Rose Ellen Boulevard and Ridgeland Avenue. The property has a lot size of 7,373 square feet. The zoning for the property is R-1 (single family residential) District. The adjacent District in all directions. Surrounding land use include residential homes and townhomes.

BACKGROUND AND HISTORY:

Fairway Grande Village Unit No. 2 was recorded in April 1977. An application for a building permit was submitted in March of 2021. A stop work order was issued by Building and Inspections Department staff on October 22, 2021 for the construction of two gazebos without a permit since the permit had not been issued for the construction. An updated site plan was submitted to Building and Inspections Department in December 2021 showing only (2) gazebos. An application for a variance request was submitted in February 2022.

ANALYSIS:

Variance request #1 is to allow an encroachment of 7 feet into the 25 feet front yard setback. The existing metal covered gazebo (porch) measures 10 feet by 10 feet for a total area of 100 square feet. The applicant would like to keep the structure in the front yard. The gazebo (porch) will provide shade and rain protection for the occupants of the residence. The structure can be relocated to the rear of the property for setback compliance. However, applicant would like to reserve the rear yard for landscaping purposes.

Variance request #2 is to allow an encroachment of up to 10.5 feet into the 25 feet front yard setback. The existing metal cover gazebo (porch) measures 10 feet by 16 feet for a total area of 160 square feet. According to the applicant, the existing metal covered gazebo (porch) is an area that the applicant and her family use for recreational purposes. The applicant would like to keep the existing structure in the front of the house since he would like to reserve the rear yard for landscaping purposes.

A review of aerials of the rear yard shows that the structure can be relocated to the rear of the property to be in compliance with setbacks.

The Zoning Board of Adjustments and appeals approved a similar variance request on October 10, 2014 for Lot 16 of the same subdivision ownership (by the same applicant) for a front yard setback of 0 feet instead of 25 feet for an existing pergola.

There are no utility easements along the front of the subject property.

Measurements provided were without benefit of a survey.

Staff has not received a phone call in support or opposition of the variance requests.

RECOMMENDATION:

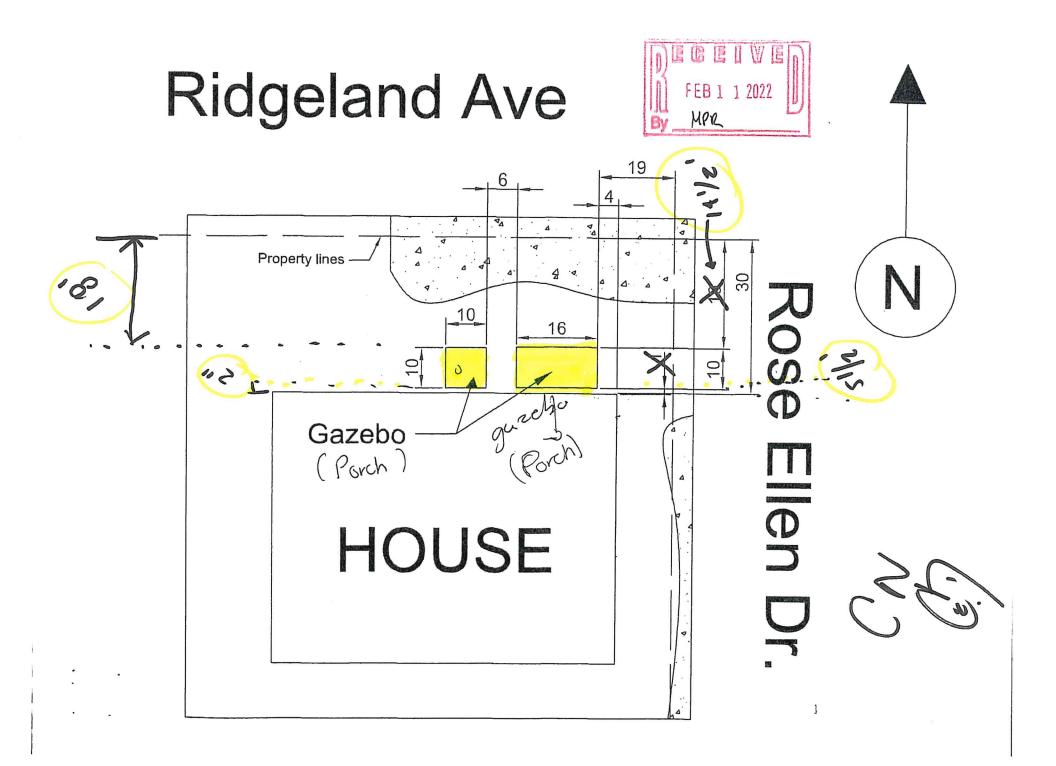
Staff recommends disapproval of the variance requests since the structures can be relocated to the rear of the property to be in compliance with setbacks. If the Board grants approval of the requests, it should be limited to the encroachments shown on the submitted site plan.

ZBA2022-0003

2	bA-3322 City of McAllen Planning Department APPEAL TO ZONING BOARD OF ADJUSTMENT TO MCALLEN ZONING ORDINANCE 311 North 15 th Street McAllen, TX 78501 P. O. Box 220 McAllen, TX 78505-0220 (956) 681-1250 (956) 681-1279 (fax)
Project	Legal Description fair arg grund inlage, Nb 2 lation Subdivision Name fair arg grunde or lage. Street Address 416 Ridgeland Avenue Number of lots / Existing Zoning Existing Land Use Reason for Appeal (please use other side if necessary) Placement of two gazebos in the front yard of our property. \$300.00 non-refundable filing fee + [] \$50.00 Recording Fee for Special Exception (carport) Current Survey and Metes and Bounds (if the legal description of the tract is a portion of a lot) is required
Applicant	Name Robert Fountila, MD Phone 956-631-2695 Address 3224 Rose Ellen Dr. E-mail robertfountila@aol.com City McAllen State TX Zip 78503
Owner	Name Robert Fountila, MD Phone 956-631-2695 Address 3224 Rose Ellen Drive E-mail robertfountila@aol.com City McAllen State TX Zip 78503
Authorization	To the best of your knowledge are there any deed restrictions, restrictive covenants, etc. which would prevent the utilization of the property in the manner indicated? Yes No I certify that I am the actual owner of the property described above and this application is being submitted with my consent (include corporate name if applicable) OR I am authorized by the actual owner to submit this application and have attached written evidence of such authorization. Signature Add Add Date 2-7-2022 Print Name Robert Fountila Owner Owner Authorized Agent
Office	Accepted by Payment received by FEB & 2022 Rev 09/20

	 *A variance will not be granted to relieve a self-created or personal hardship, nor shall it be based solely economic gain or loss. In order to make a finding of hardship and grant the variance, the Zoning Board Adjustment will consider any combination of the following: (<i>Please use an additional page if necessary to compresponses</i>) **Information provided here by the applicant does not guarantee that the Board will grant a variance. ***Applicant should include all information they determine is relevant, but it is not required to provide responte to all sections listed below. 1. Describe the special circumstance or condition affecting the land involved such that the strict application of provisions required would deprive the applicant of the reasonable use of the land:
Reason for Appeal	 Describe how the variance is necessary for the preservation and enjoyment of the legal property rights of owner: The two gazebos will provide shade and rain protection that will allow us enhanced enjoyment of our property.
Rea	 Describe how the variance will not be detrimental to the public health, safety or welfare or injurious to the key rights other property owners enjoy in the area: The two gazebos are properly anchored and will not be detrimental to the health, safety or welfare of the other property owners in the area.
	4. Describe special conditions that are unique to this applicant or property:
Board Action	Chairman, Board of Adjustment Date

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APPLICANT	P.O. BOX 22 APPLICA	McAll Rober	NS 78505-0220 OMPLETE PERMIT A	PPLICATION REFEREN ん Ve		<u>376.</u> <u>376.</u> _ <u>785</u> <u>376</u>	REV. 3/2020 1897 243 503 1243
OWNER	NAME ADDRESS CITY	ume a	s above		PHONE *EMAIL: REQ'D STATE *OWNER INFO	ZIP	
	BLDG 3	addition 90 n	REMODELING R	REPAIR MOVE SQ. FT LOT	REMOVELOT	BLDG. HGT	FLOOR EL
	EXISTING USE OF LOT SCOPE OF WORK T RESIDENTIAL NEW	NO. OF	3 pergola.5(1 NO.	NO.	sq. FT NON-LIVING	<u>+ 13' x /C</u> sq.ft LIVING	' (9 <i>ft</i> tall)
FRUJECI	OF LOT	NO. OF UNITS BB R DCK	3 pergolas(1	USE	SQ. FT NON-LIVING LE N	SQ. FT LIVING UPGRADES/OTHER GRANITE COUNT MARBLE TUBS/FL CUSTOM WINDOM POLYURETHANE OTHER UPGRADE	ERTOPS OORS NS INSULATION ES
PROJECT	OF LOT	NO. OF UNITS BB R CCK MM BLOCK	NO. BDRMS EXT WALL MASONRY VENEER MASONRY SOLID METAL SIDING COMPOSITION WOOD	NO. BATHRMS BA	SQ. FT NON-LIVING	SQ. FT LIVING UPGRADES/OTHER GRANITE COUNT MARBLE TUBS/FL CUSTOM WINDON POLYURETHANE OTHER UPGRADE SEPTIC TANK EX	ERTOPS OORS NS INSULATION ES
	OF LOT	NO. OF UNITS BB R DCK MM BLOCK ST. NO <u>4 (6</u>	B PErgolas (1 NO. BDRMS EXT WALL MASONRY VENEER MASONRY SOLID METAL SIDING COMPOSITION WOOD SUBDIVISION Fally ST. NAME	NO. BATHRMS BATHRMS BATHRMS BATHRMS BATHRMS COMPOSITION METAL BUILD UP CLAY OR CON CLAY OR CON UNCLAY BUILD UP CLAY OR CON CLAY OF CONC		SQ. FT LIVING UPGRADES/OTHER GRANITE COUNT MARBLE TUBS/FL CUSTOM WINDOM OTHER UPGRADE OTHER UPGRADE SEPTIC TANK EX YES	ERTOPS OORS NS INSULATION ES

The foregoing is a true and correct description of the improvement proposed by the undersigned applicant and the applicant states that he will have full authority over construction of same. The building permit shall not be held to permit or be an approval of the violation or modification of any provisions of City ordinances, codes, subdivision restrictions of State law or be a waiver by the City of such violation. Alteration changes or deviations from the plans authorized by this permit is unlawful without written authorization from the Building Inspection Department. The applicant herby agrees to comply with all City ordinances, codes, subdivision, restrictions and State laws and assume all responsibility for such compliance. It is understood that the Improvements shall not be occupied until a Certificate of Occupancy has been issued. Every permit issued shall become invalid unless the work authorized by such permit is commenced within six months after its issuance or if the work authorized by such permit is suspended or abandoned for six months after the time of work is commenced. This permit is good for one year only.

CRITERIA FOR ZBOA DETERMINATIONS

APPEALS

- 1. ZBOA may hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of Chapter 138 of the Code of Ordinances ("Zoning").
- 2. In conformity with the provisions of V.T.C.A., Local Government Code § 211.009 et seq. and Chapter 138 of the Code of Ordinances, the **ZBOA may** reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from.

SPECIAL EXCEPTIONS

Authorized under Ord. Sec. 138-43 ("Powers") in the following instances:

- 1. Where the **street layout** actually on the ground varies from the street layout as shown on such maps.
- 2. To permit the **reconstruction of a nonconforming building** which has been damaged to the extent of more than 50 percent of its replacement cost.
- 3. To waive or reduce the parking and loading requirements whenever:
 - a. The character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities, OR
 - b. Where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
- 4. To allow a change from an existing nonconforming use to another nonconforming use of a structure, or a structure and premises in combination, if:
 - a. No structural alterations are made, AND
 - b. The Board finds that the proposed nonconforming use is not more nonconforming in the district as the existing nonconforming use.

Ord. Sec. 138-86. - GENERAL POLICY.

The general public, the board of commissioners, and the planning board are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, wherever and whenever possible, except:

- (1) When necessary to preserve property rights established prior to the date the ordinance from which this article is derived became effective as to the property in question, and
- (2) When necessary to promote the general welfare and to protect the character of the surrounding property.

VARIANCES

Authorized only when ALL of the following applies:

- 1. Owing to special conditions, a literal enforcement of Zoning Ordinance provisions would result in **unnecessary hardship**.
- 2. Applicant proves to the Board the following:
 - a. Land in question cannot yield a reasonable return if used only for a purpose allowed in that zone,
 - b. Plight is unique and not shared in general by others in the neighborhood, and
 - c. Variance will not alter the essential character of the locality.
- 3. Variance would not merely serve as a convenience to the applicant.
- 4. Variance must be in harmony with purpose and intent of Zoning Ordinance.
- 5. Variance would not be contrary to the public interest.
- 6. Surrounding property is be properly protected.
- 7. The spirit of this Zoning Ordinance is observed and substantial justice done.

Definitions

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Chapter 138-Zoning

Sec. 138-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building means a subordinate building, located on the same lot as the main building, the use of which is clearly incidental to and customarily found in connection with the main building or principal use of the property.

Accessory use means a use which is clearly incidental to and customarily found in connection with the principal use of the premises and which is located on the same lot as the principal use.

Accessory use of building means a subordinate use or structure customarily incident to and located on the lot occupied by the main use or structure and conforming with setback and other regulations concerning location.

Alley means a minor public right-of-way which is used primarily for vehicular and utility service access to the backs or sides of properties otherwise abutting on a public street.

Apartment means a room or suite of rooms located in a building with other such rooms or suites arranged, designed, or to be occupied as a residence by a family. (See Dwelling unit.)

Associated recreation means recreational uses which are an integral part of a common ownership or associated or high density residential development (example: homeowners' association with a private club or facility).

Authorized agent means an architect, builder, developer or other person empowered to act on behalf of such persons.

Base station. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new base stations that are not eligible for Section 6409, need not be existing at the time of the application, nor does subsection 138-1.A(a)1.c. apply to a new base station.

Boardinghouse means a building other than a hotel where lodging and meals are provided for compensation.

Building means any structure designed to be built for the support, enclosure, shelter or protection of persons, animals, chattel or property of any kind. The word "building" includes the word "structure."

Carrier on wheels or cell on wheels ("COW"). A portable self-contained mobile facility moved to a location and set up to provide wireless services on a temporary or emergency basis.

Concealed or stealth design elements. A design elements of any tower, base station or transmission equipment that allows it to be integrated as an architectural feature of a tower or base station or so that it is not readily apparent to a casual observer. It may be screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure so that it is not easily recognizable from other natural structures.

Conditional use means a use which may be suitable in certain locations in a zoning district if developed and operated under specific conditions and/or for a limited period of time.

Depth of lot means the mean horizontal distance between the front and rear lot lines. (See definitions of Front and Rear lot lines.)

District means a section of the city for which the regulations governing the areas, heights or uses of buildings are uniform.

Dwelling unit means any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boardinghouses or mobile homes.

(1) Single-family means a building designed for and/or occupied exclusively by one family as a separate dwelling unit.

- (2) *Duplex* means a building designed for and/or occupied exclusively by two families living independently of each other.
- (3) *Triplex* means a building designed for and/or occupied exclusively by three families living independently of each other.
- (4) *Fourplex* means a building designed for and/or occupied exclusively by four families living independently of each other.
- (5) *Multiple* means a building designed for and/or occupied exclusively by five or more families living independently of each other.

The determination of whether one family is living independent of another is based on one or more of the following criteria: separate sanitary facilities; separate kitchen facilities; separate entrances; or separate utilities.

Eligible facilities request. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

Eligible support structure. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

Existing. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

Family means one or more persons living together as a single housekeeping unit with common sanitary and kitchen facilities.

Garage, commercial means a building or premises used for storage, repair, rental or servicing of motor vehicles.

Garage, private means an accessory building, attached or detached, designed or used for the storage of motor-driven vehicles owned and used only by the occupants of the building to which it is accessory.

Guesthouse means an accessory building designed for the temporary occupancy of guests of the primary dwelling for which there is no remuneration. "Maids' quarters" means a portion of a dwelling unit, within the same enclosure and not a separate accessory building attached to the primary building, that may contain separate sanitary and/or kitchen facilities which is designed for or used for residential occupancy by an employee of the primary residence.

Height means, for a building or portion of a building, the vertical distance from grade to the highest point of the coping of a flat roof, the deck line of a mansard roof, and the mean height level between eaves and ridge for hip, gable or gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator bulkheads, mechanical rooms, tanks, water towers, radio towers, television antennas, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height. Heights authorized in this chapter are subordinate to the airport zoning ordinance, appendix A.

Loading space means a space within the main building or on the same lot therewith, providing for the standing, loading or unloading of trucks and having a minimum dimension of 12 by 35 feet and a vertical clearance of at least 14 feet.

Lot means an undivided tract or parcel of land having frontage on a public street, and which is, or in the future may be, offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract or lot number or symbol in a duly approved subdivision plat which has been properly filed of record. The word "lot" includes the word "plot."

- (1) Corner lot means a lot abutting upon two or more public streets at their intersection.
- (2) *Building coverage* means percentage of the lot that is occupied by the ground area of a building and its accessory buildings.
- (3) *Lot, double frontage* means a lot abutting on two nonintersecting public streets as distinguished from a corner lot.

- (4) Lot lines means the lines bounding a lot as defined in this section.
 - a. *Front lot line* means the property line between the front yard and the contiguous street rightof-way boundary.
 - b. *Rear lot line* means the property line between the rear yard and the adjacent property or right-of-way, and contiguous with the legal boundary of such use.
 - c. Side lot line means the property between two adjacent lots or between the side yard and the contiguous street right-of-way boundary on corner lots.

Lot of record means a parcel of land which is part of a subdivision, the map or plat of which has been recorded in the office of the county clerk; or a tract of land not a part of an urban or town lot subdivision, the deed of which has been recorded in the office of the county clerk prior to October 15, 1973, which has not been divided since recording.

Maneuvering space means the space entirely on private property required for maneuvering vehicles in such a manner as to preclude the backing of any vehicle into any street right-of-way.

Mobile home means a movable or portable dwelling originally constructed to be towed, on its own chassis, by a motor vehicle over public roads.

Mobile home and modular home park means a unified development of five acres or more for mobile homes arranged on a tract of land owned by an individual or a single business entity for the purpose of renting or leasing lots, and meeting the requirements of chapter 122, article II of this Code.

Mobile home and modular home subdivision means a unified development of five acres or more for mobile homes arranged on a tract of land in such a manner as to provide an individual lot (see definition of Lot) for each of the mobile homes.

Modular home means a dwelling unit in which more than 50 percent of the structure is constructed at other than the construction site, brought to the site in modules, and set on a permanent foundation.

Ornamental feature means an addition to a structure designed to enhance the appearance of the structure, in compliance with all of the following criteria:

- (1) Any space occupied by or enclosed by the ornamental feature should not be included in or made a part of the air conditioned, heated, or enclosed portion of the structure;
- (2) The feature should serve no purpose or function for the structure other than ornamentation. The building should be equally functional without the feature as with the feature; and
- (3) The feature shall extend no further than 24 inches into a required yard.

Parking area means a space used exclusively for the parking of vehicles and where no other business is conducted.

Parking space means an area, not closer than six feet from the back edge of the curb, the width and length of which shall exceed by a minimum of two feet the dimensions of the type of vehicle normally to be parked in the space, and connected with a street or alley by a driveway affording satisfactory ingress and egress. The minimum dimension of a parking space shall be in accordance with the city off-street parking requirements in article VII of this chapter.

Planned unit development (PUD) means and includes a combination of different dwelling types and/or a variety of land uses which creatively complement each other and harmonize with existing and proposed land uses in the vicinity, and which comply with the Planned Unit Development provisions of chapter 134, article IV of this Code.

Portable building means a temporary building that does not have a foundation and is transportable.

Recreational vehicle or travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified as a travel trailer by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight feet and a body length not exceeding state maximums.

Residential storage building means any building, either portable or constructed onsite, utilized for storage purposes and not requiring plumbing and electrical wiring, and not used for living quarters.

Restaurant means a building or portion of a building where the primary business is the on-premises sale of prepared food, with adequate kitchen facilities for the preparation of the food to be sold, the adequacy of such kitchen facilities to be based upon the seating capacity of the restaurant and the type of menu offered, and where alcoholic beverages may be sold under the following conditions:

- (1) At least 51 percent of the gross income shall be derived from the sale of prepared food.
- (2) Any outside entrances, outside separate identification, outside signs or other separate advertising for lounge or bar areas shall be permitted only as an accessory or secondary feature of the restaurant.
- (3) Live entertainment may be permitted.
- (4) Whenever the director of planning on the basis of a sworn complaint from any person determines that a violation of this section exists, he may require any person serving alcoholic beverages as an incidental use to provide the city, within 30 days of notification, a verified audit for each quarter of the calendar year, showing the gross income derived from the sale of food.

Retail means the sale of goods directly to a consumer; engaged in, pertaining to or relating to the sale of merchandise at retail; or selling by individual items, or by the piece, directly to a consumer.

Right-of-way line means a dividing line between a lot, tract or parcel of land and the public right-of-way.

Street means a public or private thoroughfare which affords the principal means of access to abutting property, excluding alleys.

Structural alteration means any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

Structure means anything constructed, erected or artificially built up; or composed of parts and joined together in a permanent manner.

Substantial change. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

Tower. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below, except for new towers that are not eligible for Section 6409, they need not be existing at the time of the application.

Townhouse means a single-family dwelling unit constructed in a series or a group of units having common walls, each on a separate lot.

Transmission equipment. As defined in section 138-1.A - Eligible facilities request (Section 6409) Definitions, below.

Yard means an open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in the definitions of "yard" set out in this section. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

(1) Front yard means a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the right-of-way line and wall of the main building or any projections thereof other than projections of the usual uncovered steps, uncovered balconies or uncovered porches. On corner lots, the front yard shall be considered as parallel to the street upon which the lot has its least dimension, except where corner lots may be square in dimension and/or have double frontage, in which case the front yard shall correspond to the lot's side adjacent to the longest block face in which it occurs and to which the majority of the existing structures front.

- (2) *Rear yard* means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than projections of uncovered steps, uncovered balconies or uncovered porches. On all lots, the rear yard shall be in the rear of the front yard.
- (3) *Side yard* means a yard between the main building and the side line of the lot, and being the minimum horizontal distance between a side lot line and the sides of the main buildings or any projections thereof.

(Code 1966, § 32-2; Ord. No. 1996-8, § I, 1-22-96; Ord. No. 1996-70, § I, 11-18-96; Ord. No. 1998-68, § 1, 2-27-98; Ord. No. 1999-69, § 1, 8-9-99; Ord. No. 2004-15, § 5, 2-9-04; Ord. No. 2015-38, § II, 5-11-15)

Cross reference— Definitions and rules of construction generally, § 1-2.

Footnotes:

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Note—47 U.S.C. § 332(c)(7)(C) Definitions. For purposes of this paragraph—(i) the term "personal wireless services" means commercial mobile services [cellular service], unlicensed wireless services, and common carrier wireless exchange access services..."; 47 U.S.C. § 332(d)(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;..."

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Note— 47 U.S.C. § 332(c)(7)(C) Definitions for purposes of this paragraph... (ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services..."

Chapter 110-Vegetation

Sec. 110-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Buffer means a screen constructed of wood, concrete block, masonry, a combination of wood and masonry, or landscape material with a chain link fence in such a manner that adjacent property is visually screened, and so that noise, solid waste or other objectionable influences will be avoided. Such buffer shall be perpendicular to the ground, a minimum of six feet in height, continuous and uninterrupted, and 100 percent opaque except where extraordinary circumstances exist where additional height will more adequately accomplish the desired end.

Caliper means the diameter of a tree measured 12 inches above the ground for trees up to and including eight inches in diameter and four and one-half feet above the ground for trees having a diameter of more the eight inches. The diameter of a multi-stem tree shall be measured at the point below branching or the sum of the two largest stems measured at four and one-half feet above the ground which ever is greater.

Contiguous means adjacent property whose property lines are shared, or are separated by only a street, alley, easement or right-of-way.

Developed property means that portion of a lot or parcel upon which a building, structure, pavement, or other improvements have been or are proposed to be placed.

Diameter-at-breast-height (DBH) means the tree trunk diameter measured in inches at a height of four and one-half feet (54 inches) above natural grade or the DBH measurement according to the latest edition of the Guide for Plant Appraisal as published by the Council of Tree and Landscape Appraisers, when the tree trunk branches out at a point lower than four and one-half feet.

Frontage means lineal distance measured along abutting street rights-of-way.

Ground cover means low growing plants planted in such a manner as to form a continuous cover over the ground, typical horizontal growth form with a maximum height of 24 inches, such as liriope, low growing varieties of honeysuckle, confederate jasmine, English ivy or others.

Landscape material means trees, shrubs, ground cover, vines or grass installed in planting areas, including but not limited to those installed for the purpose of fulfilling the requirements of this article.

Landscape strip area means a planting area within the property lines of specified width and parallel to a public street, excluding driveways for ingress and egress.

Paved ground surface area (also referred to in this article as paved area or paved ground area) means any paved ground surface area (excepting public rights-of-way) used for the purpose of driving, parking, storing or displaying of vehicles, boats, trailers and mobile homes, including new and used car lots and other open lot uses. Parking structures, covered drive-in parking areas to the drip line of the covering or garages shall not be considered as paved ground surface areas.

Planting area means an area intended or used for landscaping that has a minimum of 40 square feet of actual plantable area and an inside dimension on any side of at least 36 inches.

Reconstruction means rehabilitation or replacement of structures on nonresidential or multifamily property to an extent exceeding 50 percent of the assessed valuation of such structures as shown on the most recent tax roll of the city.

Shrub means any woody plant of relatively low height, having several stems arising from the base and lacking a single trunk.

Stormwater detention facility means an impoundment on a lot or parcel reserved for detaining and controlling the release of stormwater runoff as required by City of McAllen Drainage Policy.

Street line means that line separating the right-of-way from any adjacent property.

Tree means any self-supporting woody plant of a single trunk and of a species which normally grows to an overall mature height of a minimum of 15 feet in the lower Rio Grande Valley of the state.

Vine means any of a group of woody or herbaceous plants which may climb by twining, by means of aerial rootlets or tendrils, or which may simply sprawl over the ground or other plants.

Xeriscape means landscape methods which conserve water through the use of drought-tolerant plants and planting techniques.

(Code 1966, § 17 3/8 -4; Ord. No. 1993-88, § I, 12-13-93; Ord. No. 2006-118, § 1, 11-13-06; Ord. No. 2007-28, § 1, 3-26-07)

Cross reference— Definitions and rules of construction generally, § 1-2.

Exceptions Cited within the Zoning Ordinance

Exceptions pertaining to front yard setbacks:

- 1. Balconies opening upon fire towers not to exceed 5 feet (Section 138-366 (d))
- 2. Balconies, uncovered (Section 138-1, Yard (1))
- 3. Chimneys not to exceed 5 feet (Section 138-366 (d))
- 4. Cornices up to 2 feet (Section 138-366 (c))
- 5. Eaves up to 2 feet (Section 138-366 (c))
- 6. Fence not to exceed 3 feet within 25 feet of a curb intersection in residential zones (Section 138-367 (c))
- 7. Fire escapes, open or lattice-enclosed not to exceed 5 feet (Section 138-366 (d))
- 8. Flues not to exceed 5 feet (Section 138-366 (d))
- 9. Ornamental features up to 2 feet (Section 138-366 (c))
- 10. Planting not to exceed 3 feet within 25 feet of a curb intersection in residential zones (Section 138-367 (c))
- 11. Porches, uncovered (Section 138-1, Yard (1))
- 12. Projections up to 2 feet (Section 138-366 (c))
- 13. Pumps, filling station not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d*))
- 14. Pumps, gas and canopies not less than 9 feet from the property line or 10 feet from the curb, whichever greater (*Section 138-259*)
- 15 Pumps, islands not less than 13 feet from the property line or 18 feet from the curb, whichever greater (*Section 138-367(d*))
- 16. Sills up to 2 feet (Section 138-366 (c))
- 17. Stairways, outside not to exceed 5 feet (Section 138-366 (d))
- 18. Steps, uncovered (Section 138-1, Yard (1))
- 19. Structure not to exceed 3 feet within 25 feet of a curb intersection in residential zones (Section 138-367 (c))

Exceptions pertaining to rear yard setbacks:

- 1. Balconies opening upon fire towers not to exceed 5 feet (Section 138-366 (d))
- 2. Balconies, uncovered (Section 138-1, Yard (1))
- 3. Buildings, accessory may occupy no more than 30% (Section 138-369)
- 4. Carports, unenclosed abutting an alley may be built up to the rear property line within the R-3A and R-3C Districts (*Section 138-356, Footnote 5*)
- 5. Chimneys not to exceed 5 feet (Section 138-366 (d))
- 6. Cornices up to 2 feet (Section 138-366 (c))
- 7. Eaves up to 2 feet (Section 138-366 (c))
- 8. Fire escapes, open or lattice-enclosed not to exceed 5 feet (Section 138-366 (d))
- 9. Flues not to exceed 5 feet (Section 138-366 (d))
- 10. Ornamental features up to 2 feet (Section 138-366 (c))
- 11. Parking, unenclosed may occupy no more than 90% (Section 138-369)
- 12. Porches, uncovered (Section 138-1, Yard (1))
- 13. Projections up to 2 feet (Section 138-366 (c))
- 14. Sills up to 2 feet (Section 138-366 (c))
- 15. Stairways, outside not to exceed 5 feet (Section 138-366 (d))
- 16. Steps, uncovered (Section 138-1, Yard (1))

Exceptions pertaining to side yard setbacks:

- 1. Balconies opening upon fire towers not to exceed 5 feet (Section 138-366 (d))
- 2. Canopy, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d*))
- 3. Chimneys not to exceed 5 feet (Section 138-366 (d))
- 4. Cornices up to 2 feet (Section 138-366 (c))
- 5. Eaves up to 2 feet (*Section 138-366 (c*))
- 6. Fire escapes, open or lattice-enclosed not to exceed 5 feet (Section 138-366 (d))
- 7. Flues not to exceed 5 feet (Section 138-366 (d))
- 8. Ornamental features up to 2 feet (Section 138-366 (c))
- 9. Porte-cochere, unenclosed and not less than 4 feet from the side lot line or 8 feet from a corner lot line (*Section 138-368 (d*))
- 10. Projections up to 2 feet (Section 138-366 (c))
- 11. Side yards can be reduced to 10% of the lot width provided the lot has a width less than 50 feet. However, no side yard shall be less than 3.5 feet (*Section 138-368 (f)*)
- 12. Sills up to 2 feet (Section 138-366 (c))
- 13. Stairways, outside not to exceed 5 feet (Section 138-366 (d))
- 14. Townhouses can be built up to the side property line with a firewall (Section 138-356, Footnote 10)

Exceptions pertaining to height measurements (Section 138-1, Height):

- 1. Chimneys
- 2. Cooling towers
- 3. Domes
- 4. Elevator bulkheads
- 5. Mechanical rooms
- 6. Ornamental cupolas
- 7. Parapet walls not exceeding four feet in height
- 8. Radio towers
- 9. Spires
- 10.Tanks
- 11. Television antennas
- 12. Water towers

Exceptions as per Planning Department Policy

By policy the following are permitted:

- 1. AC Units
- 2. Clothes lines
- 3. Concrete slabs
- 4. Fire pits
- 5. Pergolas, arbors, and trellises as a landscape feature (legal opinion, 2009)
- 6. Playground equipment
- 7. Pool decks
- 8. Pool pumps
- 9. Portable grills
- 10. Sports equipment i.e. basketball hoop
- 11 Swimming pools prior to 2009 (legal opinion)
- 12. Umbrellas and patio furniture
- 13. Water features and fountains

Legal opinions:

- In 2009 Assistant City Attorney Ignacio Perez made an interpretation to allow arbors, pergolas, and trellises within the required setbacks. The definition of landscape material is stated as trees, shrubs, ground cover, vines or grass installed in planting areas in Section 110-26 of the Vegetation Ordinance. The legal interpretation was if vines were allowed by code as a planting area and they cover vertical planes such as walls then the same logic could be applied to arbors, pergolas, and trellises as a planting area. Mr. Perez also cited Section 110-56 (g) of the Vegetation Ordinance stating architectural planters may be permitted to fulfill landscape requirements.
- 2. Prior to 2009 swimming pools were not considered a structure due to the fact they were constructed underground and the Zoning Ordinance defines a structure as anything constructed, erected or artificially built up or composed of parts and joined together in a permanent manner. However, an interpretation was made in 2009 to consider swimming pools as a structure to abide by setback requirements.

ZONING BOARD OF ADJUSTMENT AND APPEALS

RULES AND PROCEDURES

CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals adopts the following Rules and Procedures (hereinafter "Rules") to govern the substance of all board matters.

I. ORGANIZATION AND OFFICERS

A. Members

The McAllen City Commission created the Zoning Board of Adjustment and Appeals (hereinafter referred to as "Board") pursuant to Chapter 211 of the Texas Local Government Code and Chapter 138, Article II, Division 3 of the City of McAllen, Texas Code of Ordinances (the "City Code"). The Commission appoints the members for that Board under Section 211.008 of the Texas Local Government Code (the "Code").

The Commission composed the Board to sit five (5) members. Each member serves a two-year term. The Commission may renew a member's term for a maximum of three total consecutive terms. The Commission also appoints four (4) alternate members to serve in the absence of a regular board member. Alternate members serve just as regular members and are subject to the same rules as regular members, unless otherwise provided in these Rules, but do not vote except in the absence of a regular member.

B. Officers

The Board shall elect a Chair and a Vice Chair from its own regular members by majority vote. The Chair and Vice Chair each serve one year. The Board shall accept an Executive Secretary appointed by the McAllen Planning Department. The Board shall adopt an attorney advisor appointed by the McAllen Legal Department. The Board shall only accept the appointment of personnel under the condition each person remains the employee and charge of the City of McAllen, with no employment relationship to the Board.

C. Duties and Officers

The Chair shall preside over the Board, hold meetings of the Board, decide points of order, and dispense the business of the Board. The Chair may administer oaths, compel the attendance of witnesses, and issue subpoenas as per Section 211.008 of the Code. The Chair shall sign the minutes of board meeting after the minutes have been approved by the Board.

In the absence of the Chair, the Vice Chair, or in both their absences the most senior member, according to the member's appointment date, shall dispense the duties of the Chair.

II. <u>POWERS OF THE BOARD</u>

A. General Powers

The Board has those powers specified in Section 211.009 and 241.033 of the Code, and those powers granted by the City Commission under Chapter 138 (Zoning Ordinance) and Chapter 110 (Vegetation Ordinance) of the City Code, and those powers granted to the Board by ordinance.

B. Specified Powers

As per city ordinance and state statute, the Board has those powers described in Section 211.009 of the Code and Section 138-43 of the City Code. Those powers described in Section 138-43 are:

1. Hear and decide appeals that allege an error in any order, requirement, decision or determination made by an administrative official or agency in the enforcement of applicable provisions of the Local Government Code, the City Ordinance;

2. Authorize variances to specific cases from the terms of the City Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of City Ordinance will result in unnecessary hardship, and so that the spirit of ordinances shall be observed and substantial justice done;

3. Grant special exception to waive or reduce parking and loading requirements whenever the character and use of the building is such as to make unnecessary the full provisions of parking or loading, or where such regulations would impose an unreasonable hardship upon the use of the lot; and

4. Hear and decide any other matters authorized by the City Commission through ordinance.

III. <u>DUTIES OF BOARD MEMBERS</u>

A. General Duties of Members

1. All members of the Board should attempt to inspect the premises of each case which is under consideration at each meeting and become generally familiar with each case prior to Board meetings.

2. All members shall attend all meetings, provided, however, the member must provide 72 hours prior notice to the Executive Secretary in the event the member cannot attend.

3. All members of the Board shall arrive at a logical and fair decision on each case, except where a conflict may preclude a vote on the case.

B. Disqualification/Conflict of Interest

All members of the Board of Adjustment are subject to the City of McAllen Ethics Ordinance (Chapter 2 of the City Code).

In all cases before the Board where a member of the Board has a conflict as described in the Ethics Ordinance, the member shall refrain from any discussion, deliberation or vote. When applicable, the member shall complete and submit a City Conflict of Interest form, but in all cases alert the Executive Secretary at least 72 hours prior to the meeting on which the conflict is at issue. The Executive Secretary shall submit all notices of conflict to the City's attorney.

IV. <u>A BASIS FOR ACTION</u>

The Board shall decide each case based on the following:

- 1. Facts filed with application.
- 2. Testimony presented at the public hearing on the appeal.
- 3. The Planning Department's technical report on the appeal.
- 4. The Board's findings in its field inspection of the property may question all witnesses to assist the Board in arriving at a correct, logical and fair decision.
- 5. The applicable standards of review described in Section 138-43 of the City Code and Sections II.A., II.B. and VI. of these Rules.
- 6. All decisions shall be made on the Basis for Action. Neither the Board nor the individual members may use personal, first hand knowledge of any facts to make a determination, if such information has not been entered into the record or made available at the public hearing.

V. <u>APPLICANTS</u>

A. Legally Vested Interest

The Board shall not consider an application from any applicant who does not have a vested legal or equitable interest in the property in question. Applicants may appear on their own behalf or may be represented by counsel or agent. Any representation by someone other than an applicant must be accompanied with a written designation by the applicant for the agent to act on behalf of the applicant. (For example, the representative may produce a letter from the applicant to the Planning Department to authorize the representative to speak on behalf of the applicant; or, the representative may submit an application on behalf of a verifiable power of attorney.)

B. Applications

All applications for consideration by the Board must be on the prescribed form approved by the Planning Department and acceptable to the Board. The Board shall not consider applications for a variance or a special exception or any other Board action, if the application is not on a designated form. The Board shall approve the official application and the Chair shall implement it.

All applications for variances and special exceptions to commercial properties must be submitted with a current, valid "on the ground" survey. An applicant must submit a pauper form with their application if

they cannot proffer a valid survey; provided, however, the applicant illustrates their property with setbacks and encroachments as a survey would.

C. Meetings

Applicants have the right to be heard at all meetings where their applications are considered for a dispositive vote. Applicants not able to be present at the scheduled meeting to consider their application may submit to the Planning Department a written request for the Board to table the application. The Board will decide whether or not to grant the applicant's request to table. No application may be tabled at the request of applicant for more than two meetings prior to being considered for a dispositive vote. However, if the applicant requests for his/her application to be tabled because there are only four (4) board members present, such request shall not be counted against applicant's two (2) opportunities to table the application. The Board shall note on the record the reason(s) for the tabling of an agenda item. The reason(s) for each tabling, as well as the number of times an agenda item has been tabled, shall be reflected in an activity log in the meeting minutes at the end of each agenda item.

D. Evidence

Applicants should be prepared to present evidence necessary to prove their application. The burden of persuasion on seeking a remedy from the Board remains with the applicant at all times.

VI. <u>HARDSHIP</u>

A. For an "unnecessary hardship" to apply to a variance, it must relate to the very property for which the variance is sought and be a condition unique, oppressive, and uncommon to other properties. An unnecessary hardship may not be self-created, or be solely financial.

B. "Hardship" must be based on hardship resulting from sharp changes in topography or unusual terrain features. The applicant may prove the topography with a plot plan which includes topographic information related to known base points or surveys, and profiles or particular problems involved, including relationships to topographic features of adjoining properties.

C. There is no unnecessary hardship if the property is suitable and useable for the uses permitted in the district in which it lies, although there will be a loss of profit or other economic disadvantage on account of such use.

VII. <u>MEETINGS</u>

A. Texas Public Information Act and Open Meetings Act.

Except as permitted under the advice of the Board's attorney, all meetings of the Board are subject to the Texas Public Information Act and shall be open to the public. The minutes of the Board's meetings and records of its examination or other official actions are public records, unless excepted under law.

B. Quorum

A quorum consists of seventy-five percent (75%) of the full complement of members. For a full complement of five (5) members, therefore, four (4) members present constitute a quorum. The Chair may declare a quorum does not exist fifteen (15) minutes following a posted meeting time, having found at least four (4) members and alternate members are not present; provided however, the Chair may not declare a quorum thirty (30) minutes from the posted time, should at least members and alternate members not be present.

C. Regular Meetings

Regular meetings shall be held every first and third Wednesday at 5:30 P.M., or at other times as determined by the Board, in the City Commission Chambers. The Board by majority vote may change the place, day, and hour of the meetings; provided that, notice complies with the Texas Open Meetings Act (Chapter 511 of the Texas Government Code).

D. Special Meetings

The Chair may call a special meeting. A special meeting shall have a lawful purpose and members and public shall be given at least seventy-two (72) hours notice prior to the meeting.

E. Order of Business

The usual order of business shall be:

- 1. Call to Order
- 2. Approval of Minutes
- 3. Open Public Hearing
- 4. Other Statements
- 5. Introduction: New Information Recommendation
 - a) Presentation of recommendation by City Staff.
 - b) The Chair shall call the applicant or his representative(s) to present the case and answers any questions. If the applicant or representative is not present when called, the Chair may move a case to the end of the agenda.
 - c) The Chair shall then inquire if there are others who wish to address the Board in support of the case.
 - d) The Chair shall then inquire if there are those present who wish to address the Board who are opposed to the case.
 - e) The applicant or his representative may then give a rebuttal to any opposition.
 - f) If new facts are presented during this rebuttal, opposition shall be given the opportunity for rebuttal
 - g) Staff shall then have an opportunity to provide additional information, clarification or address questions from the Board.
 - h) Board discussion.
 - i) The Chair shall then declare that the discussion of the case is closed.

- j) In order to achieve an unambiguous decision, motions should be made in affirmative manner when possible.
- k) Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussion shall terminate whenever a member shall call for a vote upon the question or whenever the Chair shall so rule.
- 1) Vote on a motion.
- 6. The Chair may move a case out of regular agenda order.
- 7. Staff Report
- 8. Other Business posted on the Agenda
- 9. Adjournment

F. Staff Recommendations

City staff shall provide recommendations on each case before the Board.

G. Action by the Board

The super-majority concurring vote of seventy-five percent of the full board compliment, i.e., four affirming members of the Board, shall be necessary to reverse an order, requirement, decision or determination of an administrative official or agency; to decide in favor of an applicant on a matter upon which the Board is required to pass under any such ordinance or regulation; to authorize a variation; or to recommend to the Director of Planning to uphold or modify the interpretation of the City Code. All other matters shall be decided by a majority vote, unless otherwise specified in the City Code. The Board on its own motion may table an application when an applicant does not appear; provided however, in no case may the board table an application, for failure of the applicant to appear, more than twice without taking a dispositive vote.

H. Minutes of the Board

The Board, through its designated appointee, shall keep minutes of all meetings that indicate the vote of each member on every question on which it is required to act, or the fact that a member is absent or fails to vote. The minutes shall be filed in the office of the Planning Department and are public record.

VIII. <u>DECISIONS OF THE BOARD</u>

A. Precedent

There is not precedent. Any one case does not set a precedent for any future case. Each case shall be decided on its own merits and upon the circumstances of the case.

B. Public Statements

No Board member shall release any official statement to the public or the press. Only the Director of the Planning Department or her designated representative may make official statements on behalf of the Board.

B. Parliamentary Procedure

Any question regarding parliamentary procedure not covered by these rules shall be decided according to the latest edition of Robert's Rules of Order.

IX. <u>WITHDRAWAL OF APPEAL</u>

Any appeal or application may be withdrawn by the applicant upon written notice to the Director of Planning.

X. <u>ATTENDANCE</u>

Excessive absences cannot be tolerated, as the Board depends on a super majority of attendance in order to exercise decisions on applications for a variance. Three absences or more in a six-month period are excessive. If a Board member is excessively absent from regularly scheduled meetings, the Board may recommend to City Commission, by majority vote, that the Commission appoint an immediate replacement.

XI. <u>AMENDEMENT PROCEDURE</u>

Amendment to these rules and procedures may be made by the Board at any meeting, upon the affirmative vote of five (5) members, provided any such amendment is proposed at a preceding meeting and entered into the minutes of such meeting. However, board members may adopt through unanimous consent of all members an amendment at the meeting at which it was introduced; provided, however, the amendment shall not become effective until the next regular meeting.

Adopted this ______day of ______, 2014 as affirmed by the designated Executive Secretary assigned by the Planning Department of the City of McAllen.

Executive Secretary

ORDINANCE NO. 2018-70

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCALLEN AT CHAPTER 138 ("ZONING"), ARTICLE VI ("SUPPLEMENTARY DISTRICT REGULATIONS"), DIVISION 3 ("LOTS AND YARDS"), BY ADDING PROVISIONS REGULATING CARPORTS AND GRANTING THE ZONING BOARD OF ADJUSTMENTS TO GRANT SPECIAL EXCPEPTIONS THERETO; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the City of McAllen desires to establish rules and regulations relating to

the construction and maintenance of carports within the City,

WHEREAS, the City Commission finds that it is in the public interest to delegate the

authority to regulate carports to the Zoning Board of Adjustments,

WHEREAS, the City of McAllen seeks to protect the value of property located within

the corporal limits of the City,

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NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS

OF THE CITY OF MCALLEN, TEXAS, THAT:

SECTION I: The Code of Ordinances, City of McAllen, Chapter 138 ("Zoning"), Article

VI ("Supplementary District Regulations"), Division 3 ("Lots and Yards") is hereby amended

to read as follows:

Sec. 138-371. – Special Exception for carports.

- (a) The Zoning Board of Adjustment may grant a special exception to the minimum setback requirements for a carport when, in the opinion of the board:
 - (1) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space; and

- (2) the carport will not have a detrimental impact on surrounding properties.
- (b) In determining whether to grant this special exception, the board shall consider the following factors:
 - (1) Whether the requested special exception is compatible with the character of the neighborhood.
 - (2) Whether the value of surrounding properties will be adversely affected.
 - (3) The suitability of the size and location of the carport
 - (4) The materials to be used in construction of the carport
- (c) Storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.
- (d) If the Zoning Board of Adjustment Grants a special exception as provided in this section, the site plan and the minutes of the Zoning Board of Adjustment meeting shall be officially recorded with Hidalgo County.
- (e) Any special exception granted under this chapter is granted solely to the applicant and may not be transferred, sold, inherited, bequeathed, or devised.
- (f) A new special exception shall be required upon any change or transfer in ownership of the underlying tract; a special exception granted to a previous applicant does not confer any right to any other individual or corporation to maintain the carport without approval from the Zoning Board of Adjustment.

SECTION II: The City Secretary of the City of McAllen is hereby authorized and

directed to cause the caption of this ordinance to be published in a newspaper having

general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of

Ordinances of the City of McAllen, Section 2-56. Publication of ordinances.

SECTION III: The City Secretary of the City of McAllen is hereby authorized and directed to cause the language in Chapter 38, Article VI, Division 3, the McAllen Code of Ordinances, as amended by Section I, hereinabove, to be published in the appropriate location in the said Code of Ordinances.

SECTION IV: This Ordinance shall be and remain in full force and effect from and

after its passage by the Board of Commissioners, and execution by the Mayor.

SECTION V: If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

CONSIDERED, PASSED and **APPROVED** this <u>8th</u> day of October, 2018, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code.

SIGNED this 9th day October, 2018.

Attest: <u>Uah Aara</u> Perla Lara, TRMC/CMC, CPM City Secretary Approved as to form: <u>Austin W. Stevenson, Assistant City Attorney</u>

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2022 ATTENDANCE RECORD FOR ZONING BOARD OF ADJUSTMENT AND APPEALS

	01/05/22	01/19/22	02/02/22	02/17/22	03/03/22	03/1722	04/06/22	04/20/22	05/04/22	05/18/22	06/01/22	06/15/22	07/07/22	07/20/22	08/03/22	08/17/22	09/08/22	09/21/22	10/05/22	10/19/22	11/02/22	11/16/22	12/07/22	12/21/22
ERICK DIAZ- CHAIRPERSON	Ρ																							
SYLVIA HINOJOSA-CHAIRPERSON	Ρ	Ρ	Ρ	Ρ																				
JOSE GUTIERREZ-VICE-CHAIR	Ρ	Ρ	Ρ	Ρ																				
ANN TAFEL	Α	Ρ	Ρ	Ρ																				
HUGO AVILA	Ρ	Ρ	Ρ	Ρ																				
ROGELIO RODRIGUEZ	Ρ	Ρ	Ρ	Ρ																				
REBECCA MILLAN (ALT 1)	Ρ	Ρ	Ρ	Ρ																				
MARK TALBOT (ATL 2)				Ρ																				
SAM SALDIVAR (ALT 3)				Ρ																				
JUAN MUJICA (ALT 4)				Ρ																				

P - PRESENT

A - ABSENT

NEW APPOINTMENT

MC - MEETING CANCELLED

NRM - NO MEETING

LOQ - LACK OF QUORUM

RS - RESIGNATION